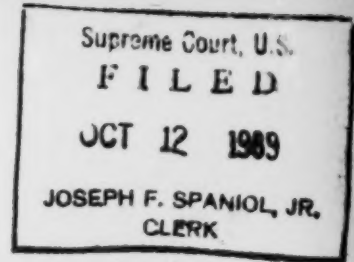


89-596

No. 89-_____



IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1989

NELLA K. BRAINIS,

Petitioner

V.

JEFFERSON PARISH SCHOOL BOARD, ET AL.,

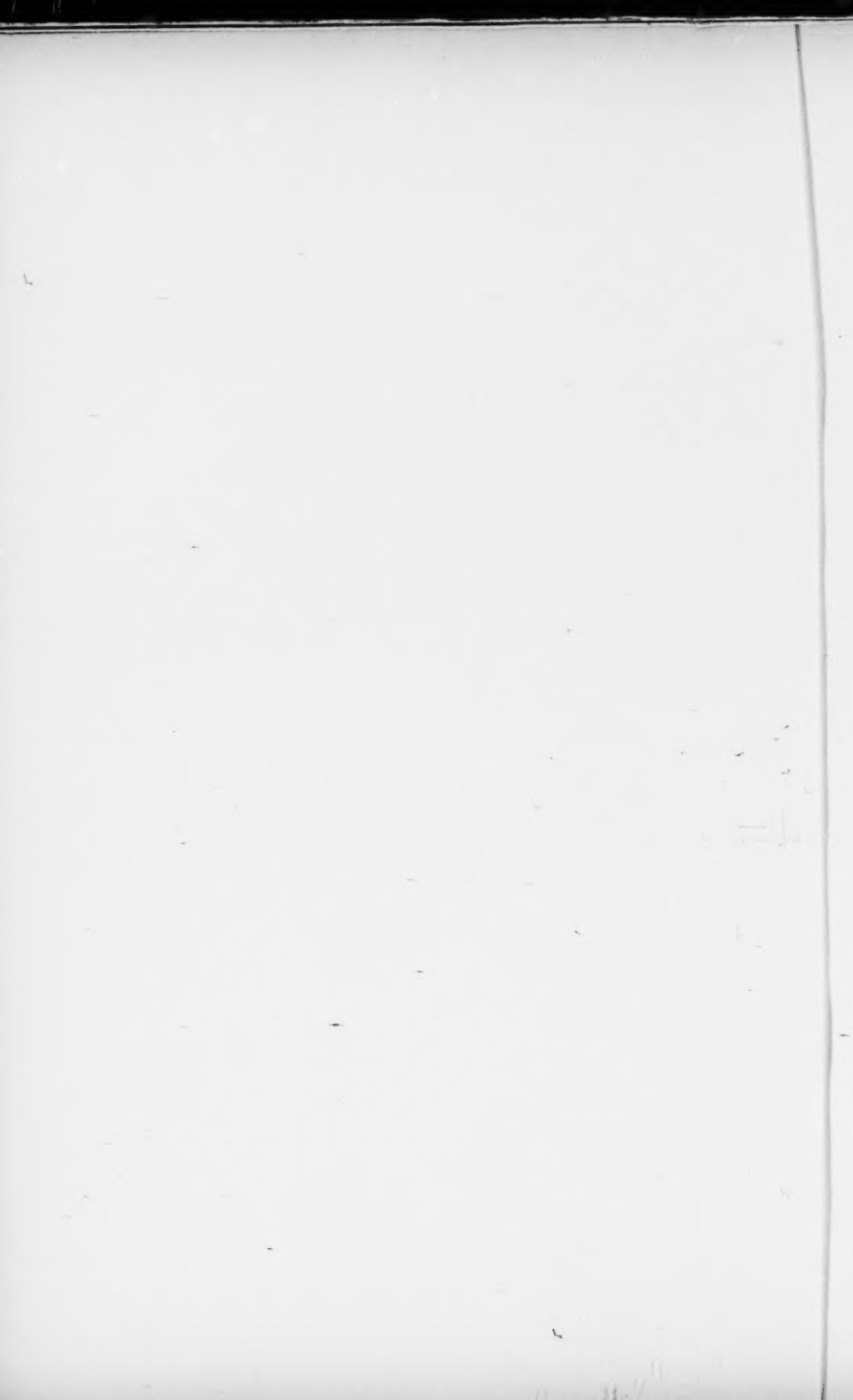
Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE FIFTH CIRCUIT COURT OF APPEALS

JOSEPH S. RUSSO, Esq.
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Attorney of Record
for Petitioner and
In Proper Person

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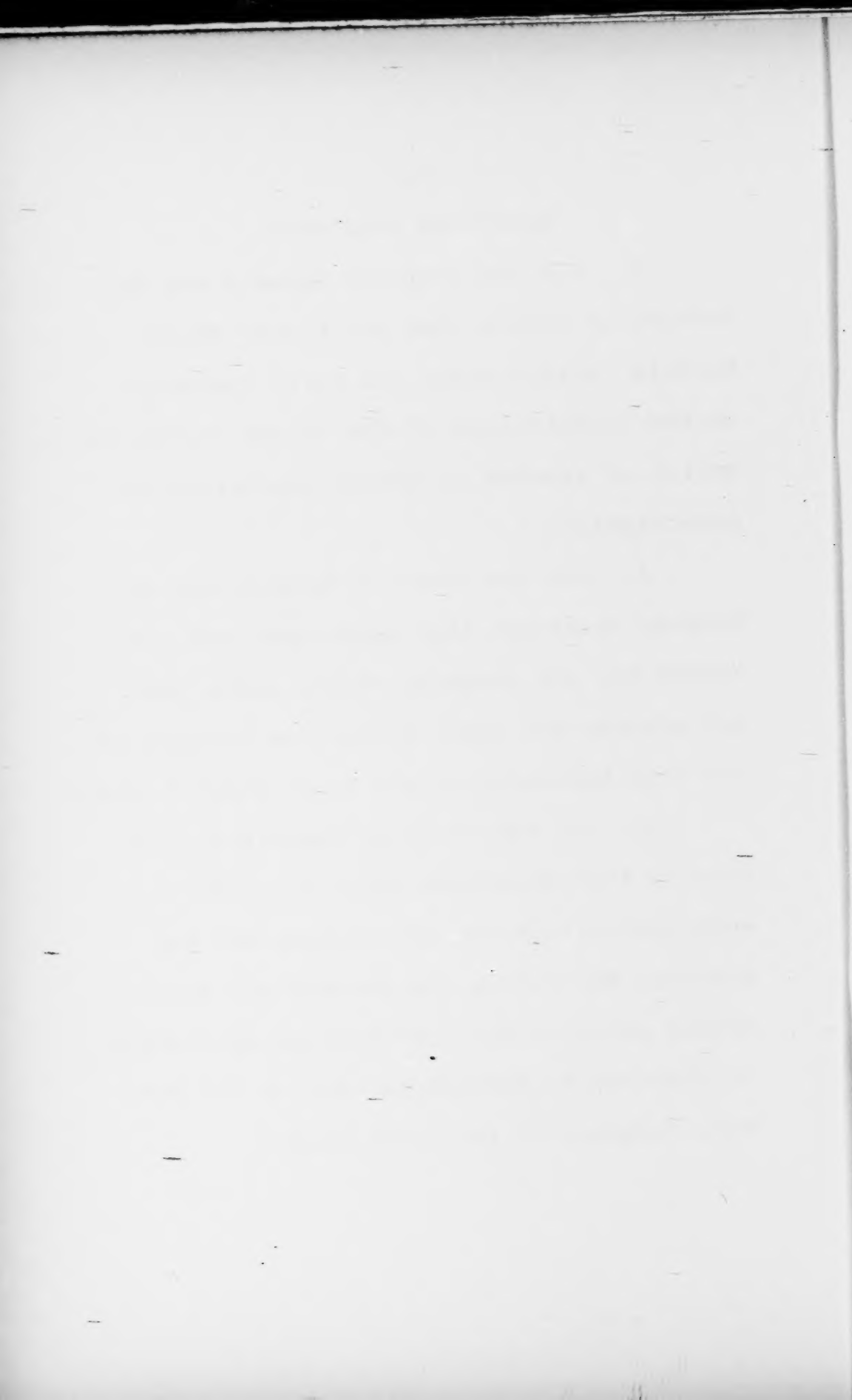


QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding in effect that petitioner Nella Brainis' action under the First Amendment to the Constitution of the United States for denial of freedom of speech was barred by prescription?

2. Did the Court of Appeals err in holding in effect that petitioner was not denied her job property rights under the due process and equal protection clauses of the 14th Amendment of the U. S. Constitution?

3. Did the Court of Appeals err in holding that sanctions under F.R.C.P. 11 were appropriate for petitioners and her attorney for filing the amended and supplemental petition and supplemental memorandum in response to defendants' Motion for Summary Judgment in the Court below?



The undersigned counsel of record for the petitioner certifies that the following listed parties appeared upon the pleadings below:

I. As plaintiff (petitioner):

Nella Brainis

II. As defendants (respondents):

The Jefferson Parish School Board;
Sidney J. Montet, Jr., Director of
Personnel;

Anthony Chimento, former Superin-
tendent;

Steve Theriot, former Board member;
Dee Allen, assistant to Sidney J.
Montet;

David DeRuzzo, former Superintendent;
Paul Emenes, Assistant Superintendent,
Region III;

Ronnie Ceruti, Personnel Administrator;
Russell Protti, Superintendent;

Barbara Turner, Director of Personnel;
Margaret Townsend;

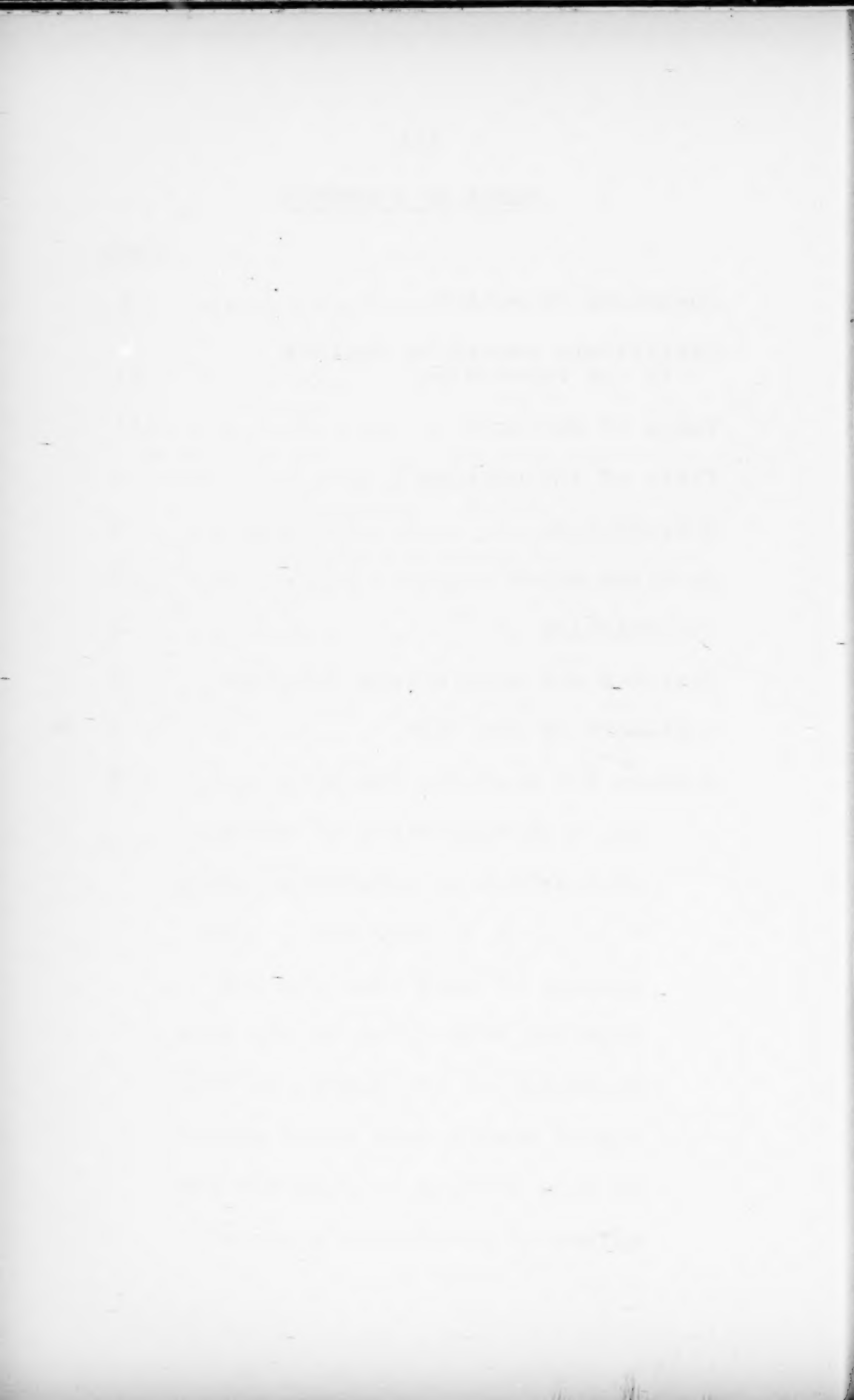
Mary Lauderdale, Director of Instruction;
George Hebert



TABLE OF CONTENTS

	<u>Page</u>
Questions Presented	i
Certificate regarding Parties to the Proceeding	ii
Table of Contents	iii
Table of Authorities	v
Introduction	1
Opinions below	1
Jurisdiction	2
Statutes and Regulations Involved .	2
Statement of the Case	3
Reasons for Granting the Writ	8

I. A determination of whether this action is prescribed under La. C.C. Art. 3492 due to the passage of more than one year from the date on which the acts constituting the denial of freedom of speech took place cannot be made without considering the effect of petitioner's appeal



from the school administration's sentence, which appeal was never filed before the Board by the Superintendent, notwithstanding his fiduciary duty to do so.....	8
II. The bundle of rights enjoyed by a government worker are property rights and may not be deprived without due process and equal protection of the laws.....	18
III. The amending of a petition to include as defendants those addi- tional parties who have violated her property rights is not a violation of Rule 11 where the allegations are reasonably supported by the facts and the law determined prior to filing the same.....	26
Conclusion	62

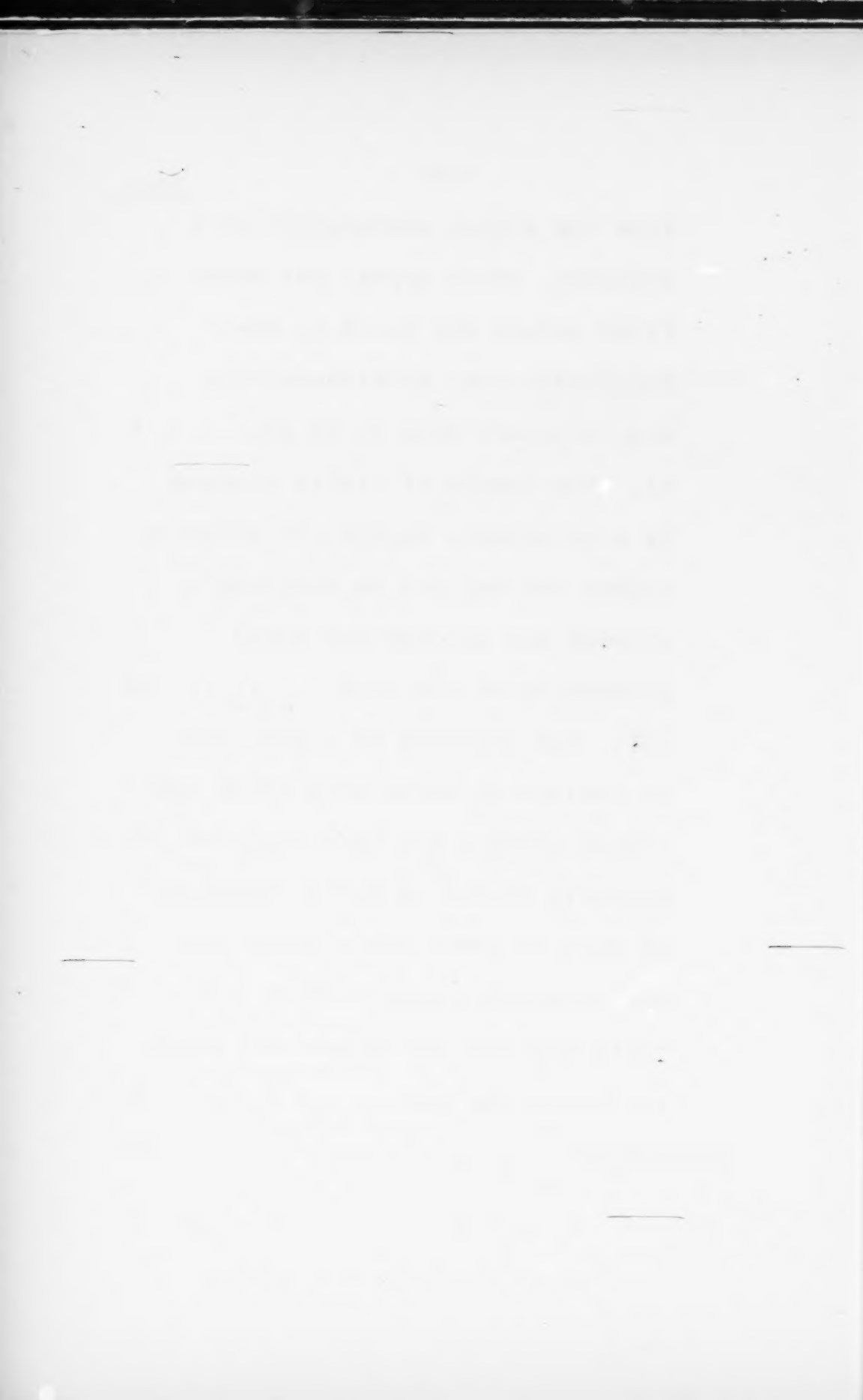


TABLE OF AUTHORITIES

	<u>Page</u>
Cases:	
<u>Atcherson v. Siebenmann,</u> 605 F.2d 1058, 1065	14
<u>Board of Regents of the U. of</u> <u>the State of N.Y. v. Tamanio,</u> 446 U.S. 478	17
<u>Bourgeois v. Orleans Psh. School</u> <u>Bd.,</u> 53 So.2d 251 (La. 1951)	52
<u>Chardon v. Fumero Soto,</u> 462 U.S. 654	13
<u>Corsey v. State Dept. of Correc-</u> <u>tions,</u> 375 So.2d 1319 (La. 1979)	12
<u>Christenburg Garment Co. v. EEOC,</u> 434 U.S. 412, 422	51
<u>Dantone v. Tangipahoa Psh. School</u> <u>Board,</u> 279 So.2d 779	26
<u>Dumas v. Ascension Psh. School</u> <u>Bd.,</u> 60 So.2d 12 (La.)	26
<u>Ford v. Caldwell Psh. School Bd.,</u> <u>et al.,</u> 541 So.2d 955 (La.App.2nd Cir., 1989)	61
<u>Foster v. Bd. of Elem. & Sec.</u> <u>Education,</u> 479 So.2d 489	10
<u>Houston v. Lock,</u> _____ U.S. (No. 87-5428) 6/24/88	64

	<u>Page</u>
<u>In Re Investigation of John L. Lauricella, Jr., 546 So.2d 207, 210 (La.App.1st Cir., 1989) ...</u>	36
<u>Johnson v. Ruby Express Agency, 421 U.S. 462</u>	13
<u>Logan v. Zimmerman Brush, 455 U.S. 422, (1981).....</u>	11,18,23, 24,64
<u>Loop, Inc. v. Collector of Rev., 512 So.2d 392 (La. 1987).....</u>	61
<u>Meyers v. Connick, 461 U.S. 138</u>	15
<u>Nathan v. Carter, 372 So.2d 56 (La. 1979)</u>	12
<u>Pardue v. Livingston Psh. School Bd., 251 So.2d 833</u>	26
<u>Perry v. Sanderman, 408 U.S. 593</u>	14
<u>Pickering v. Board of Education, 391 U.S. 563, 568</u>	14,16,18
<u>Realty Mart, Inc. v. La. Board of Tax Appeals, 336 So.2d 52 (1976)</u>	36
<u>Sewell v. Argonaut SW Ins. Co., 362 So.2d 758 (La. 1978)</u>	60
<u>Thomas v. Capital Security Serv., Inc., 836 F.2d 866 (5th Cir., 1988), 874.</u>	57
<u>Wilson v. Hartzman, 373 So.2d 204</u>	13



TABLE OF STATUTES

	<u>Page</u>
First, Fifth, and Fourteenth Amendments, U. S. Constitution ..	11,43, 52,60
La. C. C. Art. 3462	2,9
La. C. C. Art. 3463	2
La. C. C. Art. 3492	2
La. C.C.P. Art. 561	2
La. C.C.P. Art. 2162	2
La. C.C.P. Art. 2165	2
La. Constitution 1974, Art. I, Sec. 7,	2
La. R.S. 17:158A(1)	14
La. R.S. 17:443	2,9,11,12 17,22,24, 60
La. R.S. 17:445	48,59
La. R.S. 17:391.5(1),(2),(3)	2
La. R.S. 17:100-4B	25
La. R.S. 17:1182	23,30,41, 55,59,63
La. R.S. 17:1187	23,30,55, 63
Memo #4, August 7, 1981, DeRuzzo, P-7	2,8,12



INTRODUCTION

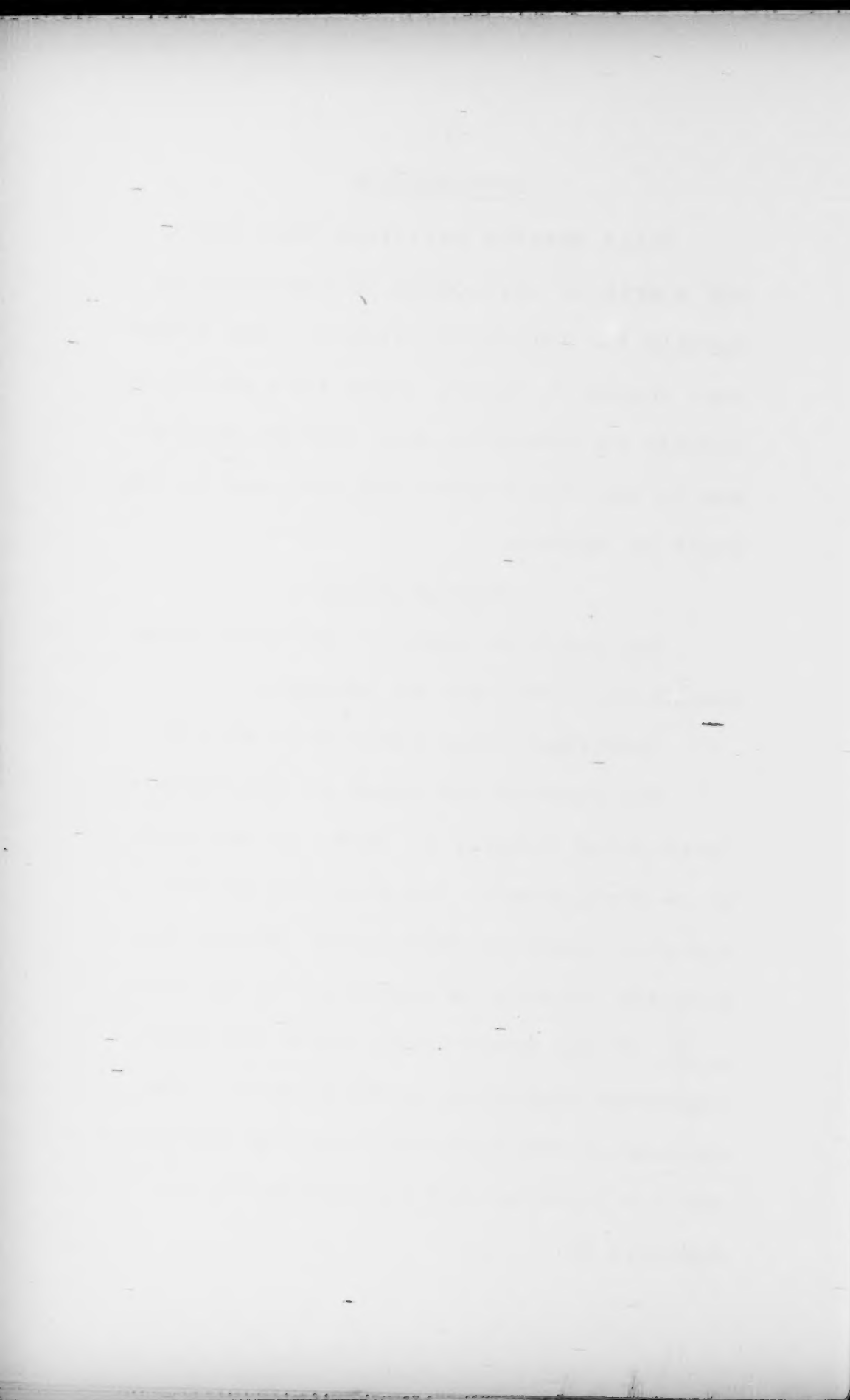
Nella Brainis petitions this Court for a writ of certiorari to the Court of Appeals for the Fifth Circuit. Her attorney, Joseph S. Russo, joins this petition insofar as sanctions were awarded against him in the Trial Court and affirmed by the Court of Appeals.

OPINION BELOW

The Court of Appeals' decision dated August 23, 1989, was as follows:

"Affirmed. - See Local Rule 47.6."

The opinion and order of the District Court dated January 6, 1988, is believed to be unreported. The decision of the District Court on defendants' Motion for a Directed Verdict is contained in volumes 13, 14 of the Lower Court which has been requested certified to this Court. The opinion of the District Court on sanctions was not reported and is reproduced in Appendix B.



JURISDICTION

Jurisdiction over this petition obtains under Rule 20.2 of the Rules of this Court. Jurisdiction of the District Court was claimed under the First, Fifth, and Fourteenth Amendments of the Constitution of the United States, 42 USCA 1981, 1983, and 1985(3), 29 USCA 623(a), 42 USC 2000(c) et seq.

STATUTES AND REGULATIONS INVOLVED

I. La. C.C. Art. 3492, 3462, 3463, R.S. 17:443, La. C.C.P. 561, 2162, 2165; Louisiana Const. Art. 1, Sec. 7; the First, Fifth, and Fourteenth Amendments to the U. S. Constitution; 42 USCA 1981, 1983, 1985(3), 1986; Memo #4, August 7, 1981, Superintendent DeRuzzo.

II. Louisiana R.S. 17:391.5(1), (2), (3); R.S. 17:100.4B; La. R.S. 17:1182, 1187; RIF Rules 1984, 1986, applicable part.

III. Rule 11, F.R.C.P.



STATEMENT OF THE CASE

The Trial Court ruled on Motion for Summary Judgment that prescription barred: petitioner's action against Board member Steve Theriot; the requirement that she undergo special conferences without the assistance of her attorney; the finding of incompetence against her by Superintendent DeRuzzo; her being required to undergo "professional assistance" on November 30, 1984; the denial to her of freedom of speech in 1984. It also ruled that all job-related claims arising prior to April 22, 1986, were excluded by res judicata. After trial, all claims as to all defendants were dismissed on defendants' motion for directed verdict. The Magistrate then set a motion for sanctions under Rule 11 and awarded \$7,740 against each petitioner. He additionally reserved defendants' rights to move for fees under 42 USCA 1988, which



defendants have now done, but which the Magistrate has stayed, apparently pending the outcome of this case.

Petitioner Brainis was assigned to ride school busses for a bus audit as an extra duty outside the scope of her normal duties as set forth in her job description. At the conclusion of this audit, she wrote a letter to Dr. Glynn Bowman, the person in charge of the audit for the State Department of Education, setting forth her observations. She sent copies to each member of the School Board and to Supt. DeRuzzo. No one said anything about the letter for two weeks until Steve Theriot, a member of the School Board, read it and complained to her supervisor and DeRuzzo. Immediately upon his complaint, special conferences were held first by Emenes, her immediate supervisor, and then the Superintendent. The letter was mailed on approximately April 28, 1984. The



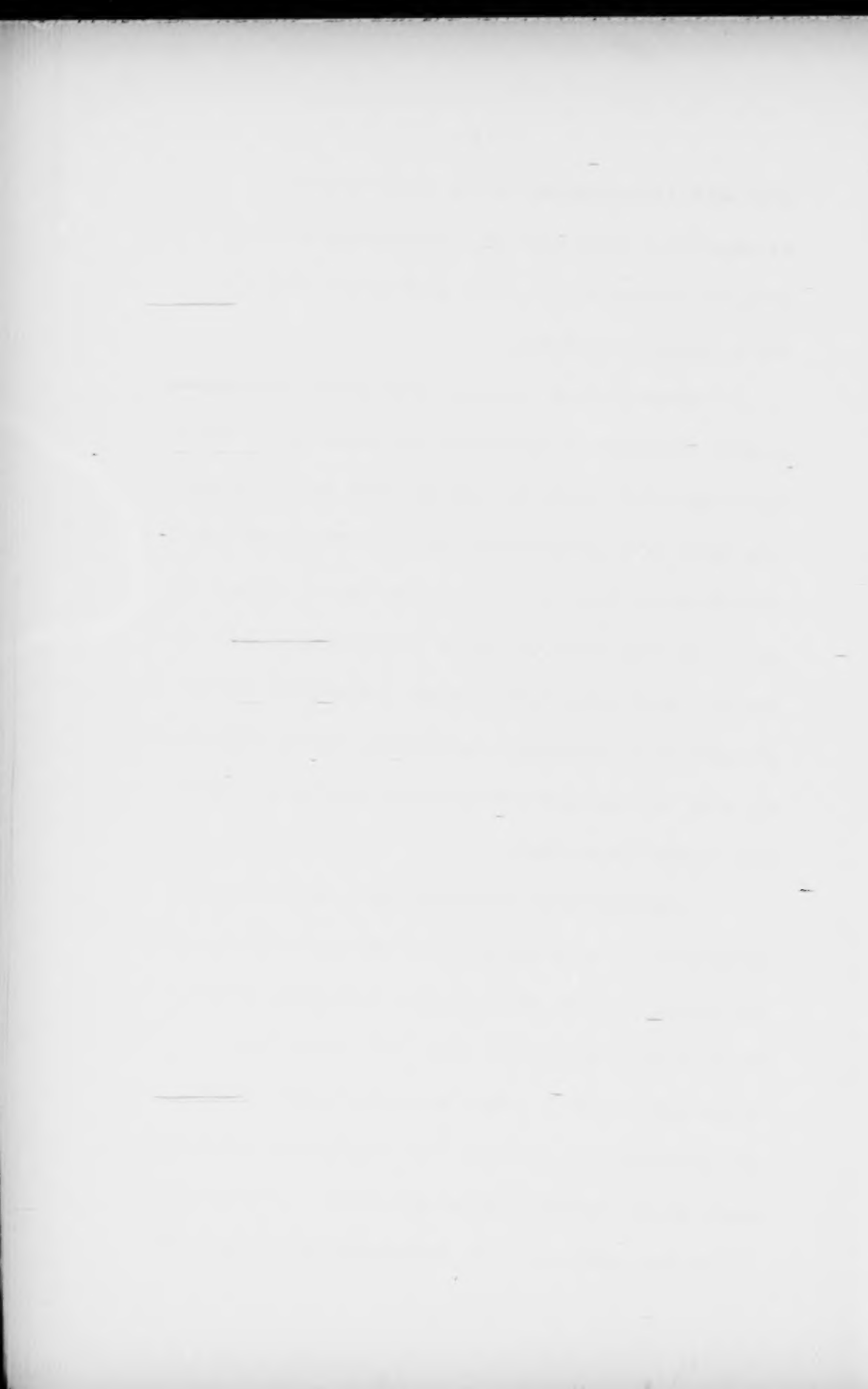
Emenes conference started after Theriot spoke to Emenes on May 15, 1984, and DeRuzzo took it over by May 17, 1984. None of the school policies as to time allowance and representation for such a hearing were complied with. Petitioner appealed from the decision of incompetence, suspension, and remediation rendered by DeRuzzo on the ground that she violated his Memo #4, August 7, 1981, and did not know that audit information was inherently confidential. DeRuzzo responded that he would schedule the hearing before the Board. He did not place her appeal on the Board agenda although it was his duty to do so, and although he stated he had done so. After several months passed, he said he was withdrawing the charge but still requiring her to do the remediation as part of her sentence. Petitioner did not agree to dismiss her appeal and refused to do the so-called "remediation" until



she was threatened with additional trumped-up charges of "insubordination" and/or neglect of duty and then did it only under protest.

After this letter was sent and after Steve Theriot's threats to make life hard for her and that he would see to it that she was not promoted, petitioner was demoted from her position, without a cut in pay, on the excuse of a "reduction-in-force" and has never been recalled to a proper job although everyone else affected by the so-called reduction-in-force (RIF) has been recalled.

Petitioner amended her petition because: (1) Another so-called reduction-in-force occurred in 1986 and her rights were again ignored; and (2) When she returned from a year's sabbatical leave on January 15, 1987, her employee rights were also totally disregarded. Instead of being assigned to Bonnabel High School,



as she was statutorily entitled to be assigned, she was assigned to West Jefferson High School, a long distance from her home, and necessitated the crossing of the Mississippi River bridge twice a day. The Magistrate held that the filing of this amended petition violated Rule 11, F.R.C.P., and awarded sanctions of \$7,740 each to petitioner and her attorney, and reserved defendants' right to apply for additional fees under 42 USCA 1988, which they have now done. Thus, a single teacher who has a minor child to care for, now faces financial ruin, all because she has attempted to secure her rights which have been grossly abused by the School Board and the school administration. The Magistrate did not specify or articulate how Rule 11 had allegedly been violated either by the supplemental memorandum or the supplemental petition prior to hearing.



REASONS FOR GRANTING THE WRIT

I. The bus audit part of this action including the conduct of Steve Theriot, Paul Emenes, Dee Allen, and David DeRuzzo involving the two special conferences, the sentence, the deprivation of petitioner's freedom of speech, are not barred by prescription because: (a) the appeal interrupted the running of prescription; the appeal was never disposed of and therefore is still pending; (b) the policy under which petitioner was charged, Memo #4 of 1981, has been in continuous force from that time and continues in force. This continuous policy interrupted prescription; (c) by not filing her appeal which he had a duty to do, while indicating he would, Dr. DeRuzzo worked a deception upon petitioner, which deception she did not discover until she had reviewed the agenda of the Board based on the deposition of Steve Theriot in December 1986,

that he had never seen the appeal on the agenda.

In the instant case, DeRuzzo punished petitioner by charging her with incompetence, stating publicly that he would recommend suspension of her without pay, allowing the newspaper to pick this up, then attempting to withdraw the charges to defeat her appeal rights while imposing upon her the "remediation" part of the sentence.

The filing of the appeal, it is submitted, is analogous to the institution of a suit in court. C.C.P. 3462. This is the only route by which a teacher may get to court on a teacher-discipline or evaluation problem. R.S. 17:443. The Superintendent acknowledged receiving this appeal. This interruption of prescription continues for as long as this appeal is pending, or until it is abandoned.

The alleged withdrawing of the



charges does not affect dismissal because: (1) the Superintendent has no authority to dismiss or withdraw the appeal without the consent of the employee and the Board. See Foster v. Elementary and Secondary Education, 479 So.2d 489, 495 (1st Cir., 1985); La. C.C.P. Art. 2162, 2165; (2) the withdrawing of the charge or the decision not to make the recommendation to the Board does not affect the appeal because: (a) the employee has a right to appeal to the Board to have the disciplinary action taken and publicized by the Superintendent reviewed by an evidentiary hearing by the Board; (b) the Superintendent cannot impose part of the sentence and defeat her right to a hearing before the Board for the remainder (the remediation). Even if it is assumed that this were possible, which is denied, then nevertheless, petitioner has her appeal rights under the Evaluation



Regulation.

By filing this appeal with the Superintendent, petitioner had done everything she could do under the regulations and R.S. 17:443 to preserve her rights. Therefore, the position of the petitioner is indistinguishable in principle from that of the petitioner in Logan v. Zimmerman Brush Co., 455 U.S. 422 (1981) and she has been denied due process of law under the due process clause of the 5th and 14th Amendments of the U. S. Constitution, and equal protection of the laws as defined in the concurring opinion in that case. Because the Board created two classes of employees--one class whose appeals would be filed and forwarded to the Board in accordance with law and one class whose appeals would not be forwarded. State tolling law is applicable in all its ramifications to federal causes of action within the State. Johnson v. Ruby



Express Agency, 421 U.S. 462, 463.

La. R.S. 17:443 guarantees these appeal rights to the petitioner. These defendants, who denied her rightful appeal, should not be allowed to take advantage of their wrongful conduct in this deception. The State doctrine of contra non valentum etc., Nathan v. Carter, 372 So.2d 56 (La. 1979) and Corsey v. State Dept. of Corrections, 375 La. 1319 (La. 1979) should be invoked to prevent it.

Prescription is interrupted when the policy under which the conduct occurred (Memo #4 dated 8/4/71) has been in continuous operation to the time of trial as found by the trial court herein. Her letter involved bus routes, something of compelling public interest, and student pick-up performance on the routes, also of compelling public interest. Therefore, the regulation was enforced to defeat her freedom of speech. The conduct of DeRuzzo



and the Board in failing to process petitioner's appeal was continuous. She suffered damages each day the appeal was not properly processed. Wilson v. Hartzman, 373 So.2d 204, writ denied 376 So.2d 961. See Chardon v. Fumero Soto, 462 U.S. 654.

The RIF procedure was in force from June 27, 1984, for a period of two years, to June 30, 1986. This suit was filed on June 11, 1986. Prescription did not begin to run until June 27, 1986, on the assignment and recall aspect of the 1984 RIF.

Petitioner's letter did not disturb the routine of her office or her fellow employees, or her superior. They were not concerned in any way with the operation of school busses, school bus drivers, or the bus audit. The school administration had no legitimate reason for keeping the letter from the School Board. The School Board



has a duty to provide transportation to the students. La. R.S. 17:158A(1). How the busses were being used was important information for the Board, should it desire to take remedial action. Defendants did not meet their burden of demonstrating school administration or a Board interest which justified petitioner's being charged with incompetence, suspended for three days, and given remediation punishment. See Perry v. Sanderman, 408 U.S. 593.

Petitioner did not release the letter to the press. A member of the Board released it for his own purposes. Therefore, this school administration punished petitioner because of something a member of the Board did. Are these valid reasons to punish petitioner for exercising her freedom of speech? See Pickering v. Board of Education, 391 U.S. 563, 568; Atcherson v. Siebenman, 605 F.2d 1058, 1065. There is no evidence that petitioner's statements



were false or that they were recklessly made. Meyers v. Connick, 461 U.S. 138 is not applicable.

In Meyers v. Connick, 461 U.S. @ 144, the Court observes:

"In all of these cases, the precedents in which Pickering is rooted, the invalidated statutes and action sought to suppress the rights of public employees to participate in public affairs. . ."

Petitioner, in writing her letter, was attempting to participate in public affairs. The charges trumped up against her were for the purpose of intimidating her and other school employees from participating in public affairs concerning the school busses and the manner of their functioning. Her letter, like Pickering's, was "'a matter of legitimate public concern' upon which 'free and open debate is vital to informed decision-making by the electorate.'" Meyers at 145. Every subject addressed in her letter was a matter



of public concern. She had no personal employment dispute. Her immediate supervisors were not involved in any way with busses. The resolution of the questions in the letter would not affect her employment one way or the other. She had no grievance over internal office policy. Indeed, was not petitioner, in her letter, doing exactly what the Court referred to in Pickering @ 572 as free and open debate:

"Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal."

Petitioner has never been recalled to a proper position after being demoted to an inferior job in a so-called RIF on June 27, 1984. Nor in the so-called 1986 RIF. She is obviously being retaliated against for expressing her freedom of



speech in the April 27, 1984 letter.

This Court in Board of Regent v. Roth, 408 U.S. 514 (1972) said:

"Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. . . ."

Defendants, in holding petitioner incompetent, suspending her without pay, and requiring her to do remediation have done just that to petitioner. The failing to recall her to a proper job after all these years, when everyone else has long since been recalled, is a continuing assault upon her integrity.

A tenured teacher's job can only be affected by one of the elements listed in La. R.S. 17:443 for disciplinary purposes. Those are: (1) willful neglect of duty; (2) incompetency or dishonesty; and (3) being a member of a prohibited organization. Speaking out is not included.



"Interfering with the work place" means interfering with the actual day-to-day work of the administrator/teacher.

Did petitioner have a right to have a hearing on the finding of the Superintendent that she was incompetent, suspending her for three days without pay, and imposing remediation upon her and causing his finding to be published in the newspaper? It is submitted that the jurisprudence of this Court as announced in Logan, and Pickering, supra, and the cases cited therein answer this question in the affirmative.

II. Petitioner had the right to be properly classified on the documents making up the so-called 1984 reduction-in-force. She was not properly classified. The following people who had no more entitlement than she did were given 40A entitlement. She was given only 40B entitlement: Jim



Sharp, George Hebert, Al Martin, Dale Boudreaux, Wayne Brown, and Al Robicheaux were given 40A entitlement to better jobs.

The reduction-in-force did not end until June 30, 1986. The suit was filed below on June 11, 1986. Therefore, prescription had not run when the suit was filed, since it was within the recall period of the RIF. In the alternative, nothing after June 11, 1985, was prescribed. The denial of her rights under the RIF regulations was continuous and interrupted prescription.

Petitioner had a right to be assigned based on seniority to any job for which she was qualified by state teacher's certificate, which was nearer in rank, status, and dignity to her tenured job. She was not so assigned, while others were. If you occupied a so-called 40A job at the inception of the RIF, which petitioner did, you were supposed

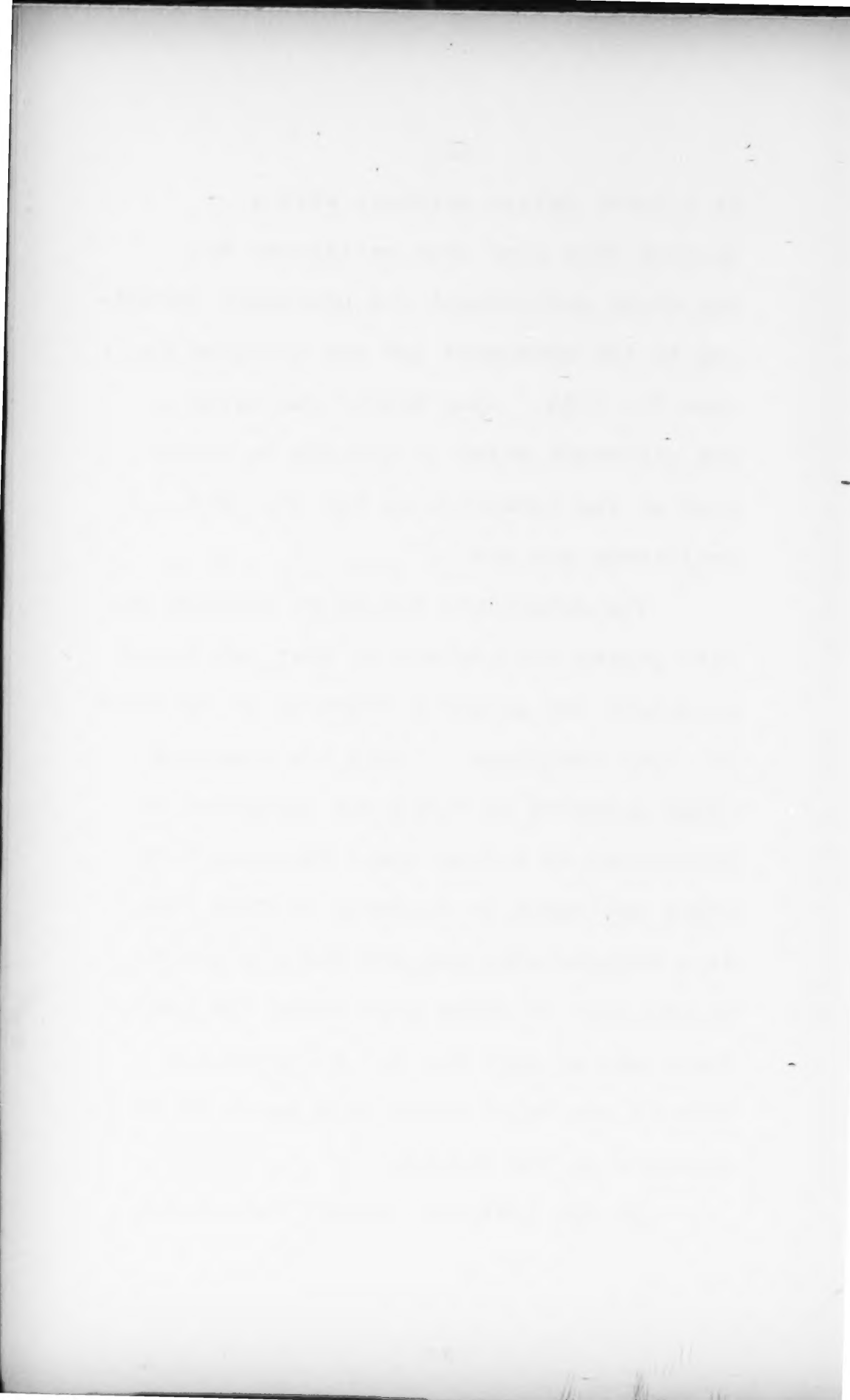
to be treated as entitled to assignment to a 40A job. Petitioner was not. Yet John Austin, who had no entitlement to a 40A job, was assigned to one. Indeed, the following people, who had no rights under RIF because they were not tenured as administrators as petitioner was, but only as teachers, and therefore had no administrative seniority, were assigned better jobs for a larger work year than petitioner, although she was a 12-month employee in salary category 40: Barbara Adams, given entitlement to a 40A job and assigned to a salary category 30 job; (petitioner was assigned to a salary category 7 job); Milton Shorlich, Susan Higgins, and Jackie Boudreaux were likewise given better jobs than petitioner without entitlement. The same was true of Patricia Barker, Lisa Mowen, Glendee Hembree, and Ruth Woodward. Betty Simmons was tenured



at a lower salary category with a smaller work year than petitioner but was given entitlement and placement according to the untenured job she occupied on June 27, 1984. John Hecker was given a job placement based on the job he occupied at the inception of the RIF, but petitioner was not.

The defendants failed to provide her with proper information so that she could ascertain her proper placements in relation to other employees. There are numerous other examples of disparate treatment of petitioner as a government employee from other employees in evidence in this case. As a tenured employee she had a right to be assigned to these jobs under the law. There was no need for her to apply for them as the trial court held based on no evidence in the record.

At the 1984 RIF, Robert Farrington



was placed in his job of highest tenure according to the entitlement document, which was Principal. Yet when a vacancy as Supervisor of Child Welfare and Attendance (SCWA) came about, he was allowed to voluntarily transfer into it on 6/4/86, although petitioner had never been recalled from the 1984 RIF and held tenure as SCWA, and he waived any right to be assigned to this job under D4 of the regulation by accepting assignment to his highest tenured position.

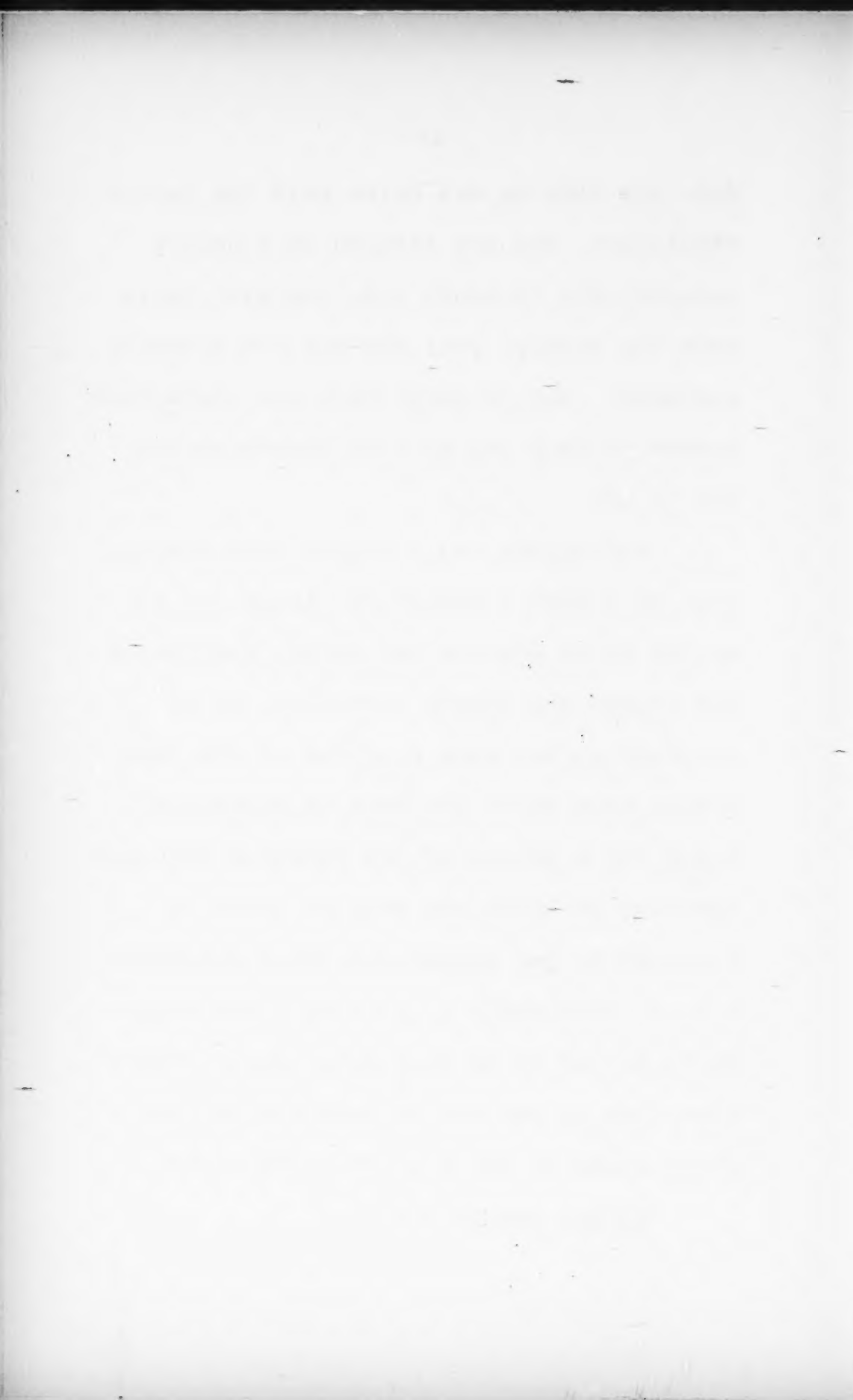
Petitioner was denied a right of appeal to the School Board as provided in E2, in connection with 1984 and 1986 RIFs and R.S. 17:443 provides for such an appeal where a tenured employee is demoted also. The reason given for assigning William Kelly as an Assistant Principal ahead of petitioner, even though he had less administrative seniority than she



did, was that he was being paid the salary. Petitioner, who was tenured in a salary category 40, 12-month job, was also being paid the salary; yet, she was not properly assigned. She is moved here and there each summer as they try to find something for her to do.

Petitioner had a right, upon completion of a year's sabbatical leave, to be called in to discuss her return assignment, and unless she agreed otherwise, to be returned to the same position at the same school from which she went on sabbatical leave for a period of one semester for each semester of which she went on leave as required by her sabbatical leave contract, R.S. 17:1187 and R.S. 17:1182. The defendants failed to do this even though they knew that it was and is required by law, while doing so for all other employees.

Logan, supra, @ 430:



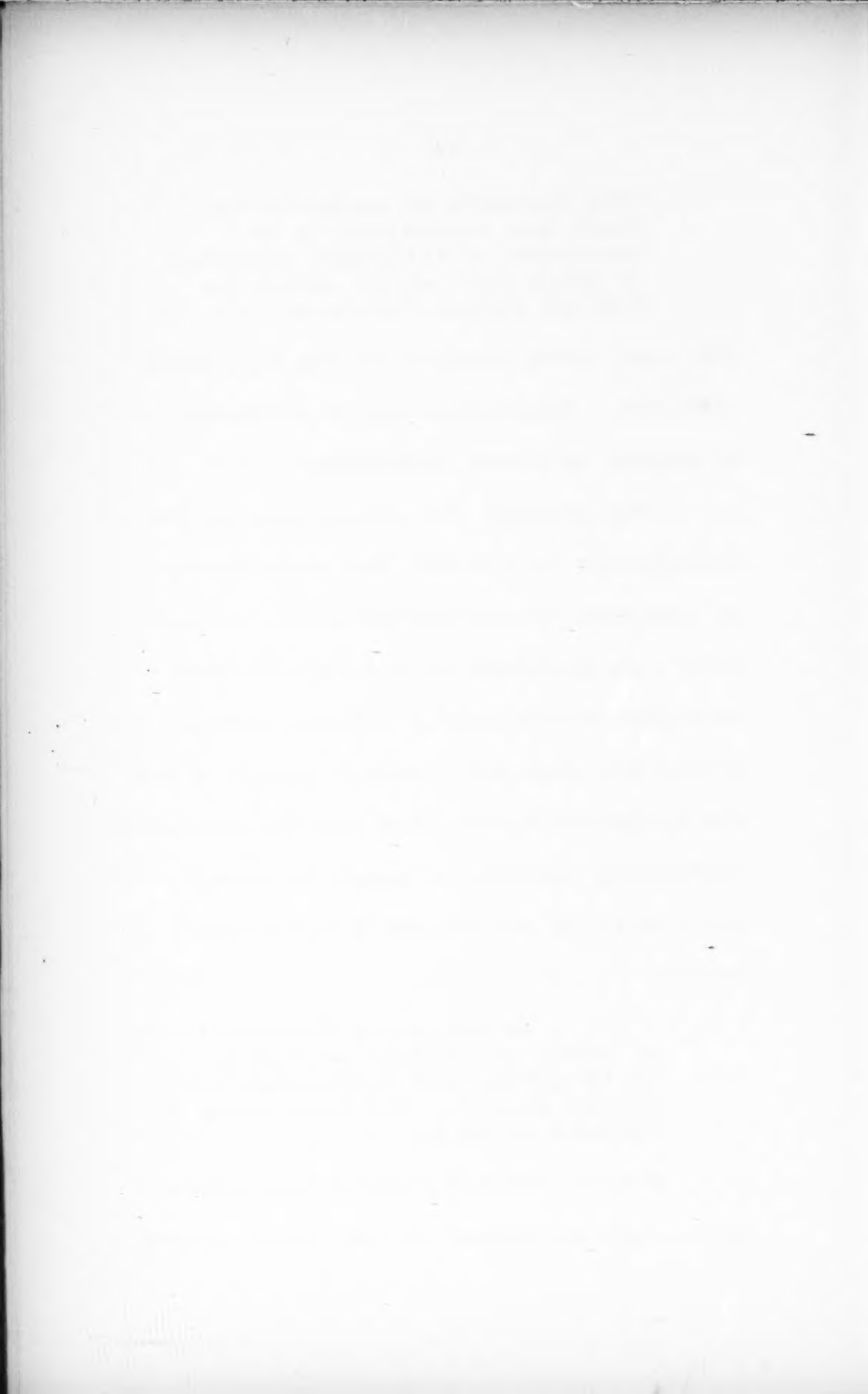
"The hallmark of property the Court has emphasized is on individual entitlement grounded in state law, which cannot be removed except for cause. . . ."

The same thing happend in the so-called 1986 RIF. Petitioner was also denied an appeal by these defendants.

The process due petitioner is the opportunity to present her case fairly, in response to the presentation of the Board, as provided in R.S. 17:443 and have its merits fairly judged, and an action for damages. Logan, supra, @ 433. The following taken from Justice Powell's concurring opinion in Logan is equally applicable to petitioner's situation herein:

" . . . As claimants possessed no power to convene hearings, it is unfair and irrational to punish them for the Commission's failure to do so. . . ."

E-2 of the RIF regulations allow petitioner an appeal to the Board if she



is demoted to a job of lower status. A lower job is defined in the Louisiana jurisprudence as being a job that requires less education or a lower teacher's certificate. The job of Disciplinarian as opposed to Coordinator of Student Services and SCWA satisfies this requirement of a job of lesser status. Yet she was denied her appeal.

La. R.S. 17:100.4B provides for representation during a special conference. Therefore, it is part of petitioner's property rights in her job which were denied her.

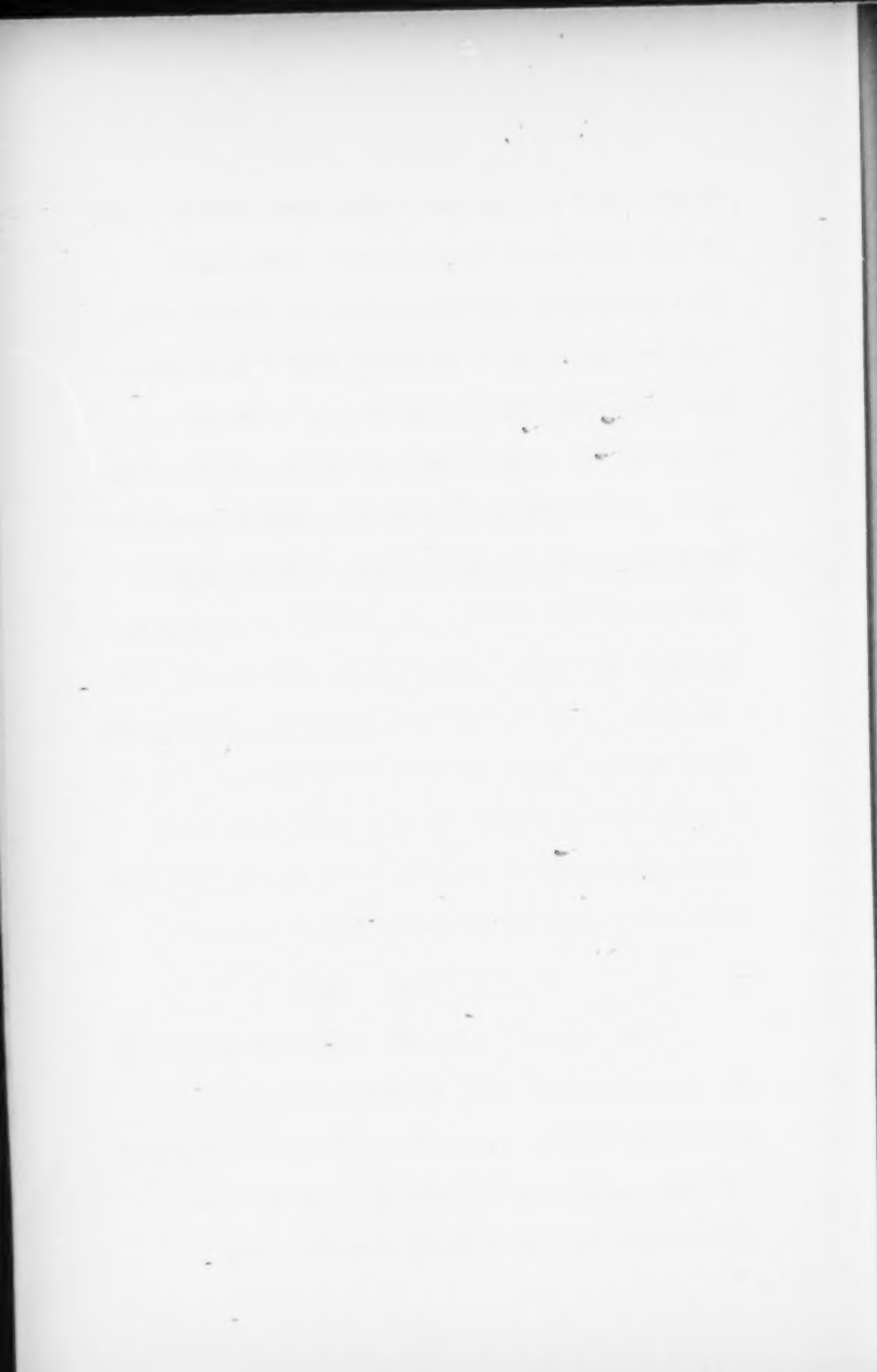
The property interest an employee has in her job includes the right to be properly recalled in accordance with state law and the rules of the Board made pursuant to those laws. Petitioner denies that her recall rights could end June 30, 1986, the end of the RIF. Her recall



rights are protected under the tenure laws of the State of Louisiana. The state jurisprudence interpretive of those statutes hold that a teacher whose position has been abolished has a right to be assigned to a position of equal rank, dignity, and status to the abolished position. Dantone v. Tangipahoa Psh. School Board, 279 So.2d 779 (1st Cir., 1973); Pardue v. Livingston Psh. School Bd., 251 So.2d 833 (La.App. 1 Cir., 1971); Dumas v. Ascension Psh. School Bd., 60 So.2d 12 (La.). Petitioner had a right to any position that became available in the 1986 so-called RIF which was nearer to her tenured job.

III. SANCTIONS

Petitioner supplemented her petition to include the 1986 so-called reduction-in-force (RIF). She alleged the violation of the sabbatical leave policy of the Jefferson Parish School Board. She

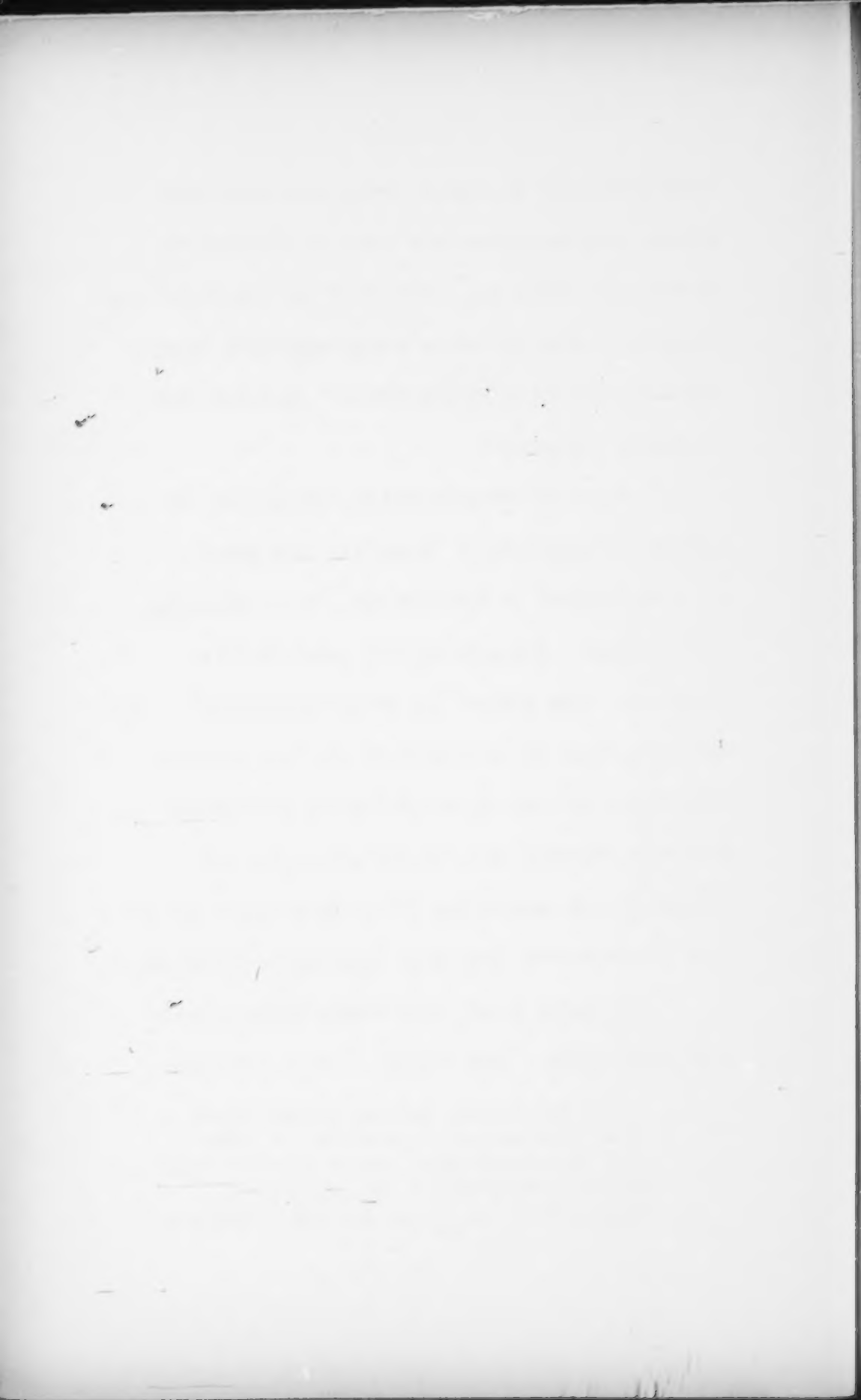


additionally alleges that she was not given the notices she was entitled to after the 1984 or 1986 RIF's, among other things. She filed a supplemental memorandum opposing defendants' Motion for Summary Judgment.

Rule 11 requires an attorney or party to certify: that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the paper is well-grounded in fact and is warranted by (a) existing law; or (b) a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose.

On page 5 of his Memorandum Opinion and Order, the Trial Court states:

"The evidence established that the positions (outside of the RIF proceedings) were advertised which required a prospective appointee to file an application



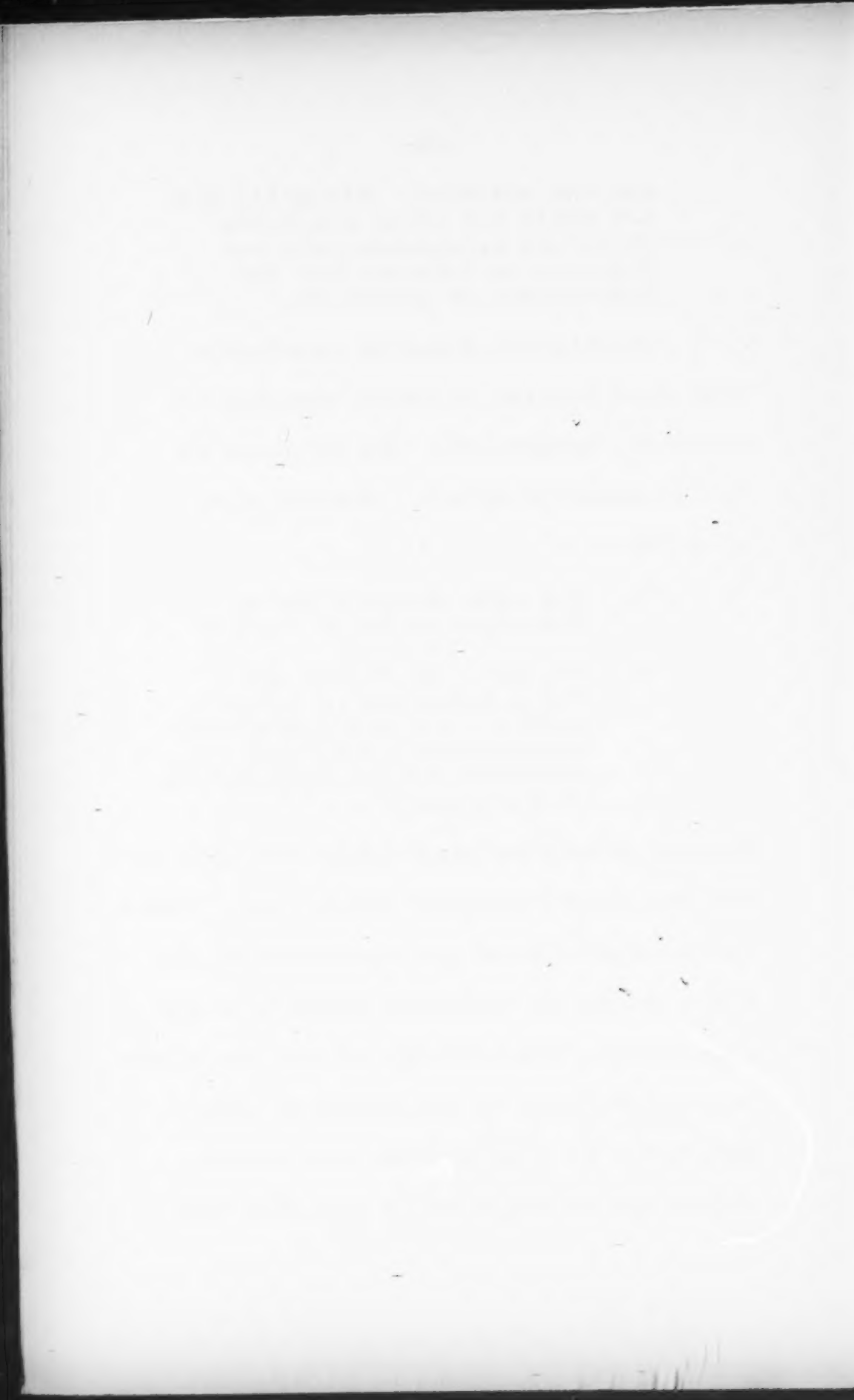
for the position. Plaintiff did not apply for those positions therefore defendants were not required to consider her for appointment or promotion."

Petitioners disagree vehemently with this finding as being contrary to Louisiana Tenure law. The evidence is to the opposite effect. Emenes, V.4, p. 4-230:

"Q. You need to apply for a reduction in force recall?

"A. No, sir, you do not apply for a reduction in force recall. You are guaranteed entitlements under that according to the regulations of the recall. . . ."

Whether petitioner must apply for jobs to get her rights concerns tenure law. There is no tenure law or jurisprudence of the state courts of Louisiana which hold any such thing. The holdings of the Louisiana jurisprudence is to the opposite effect. Obviously, if a person who has tenure rights has to apply for a job, the same

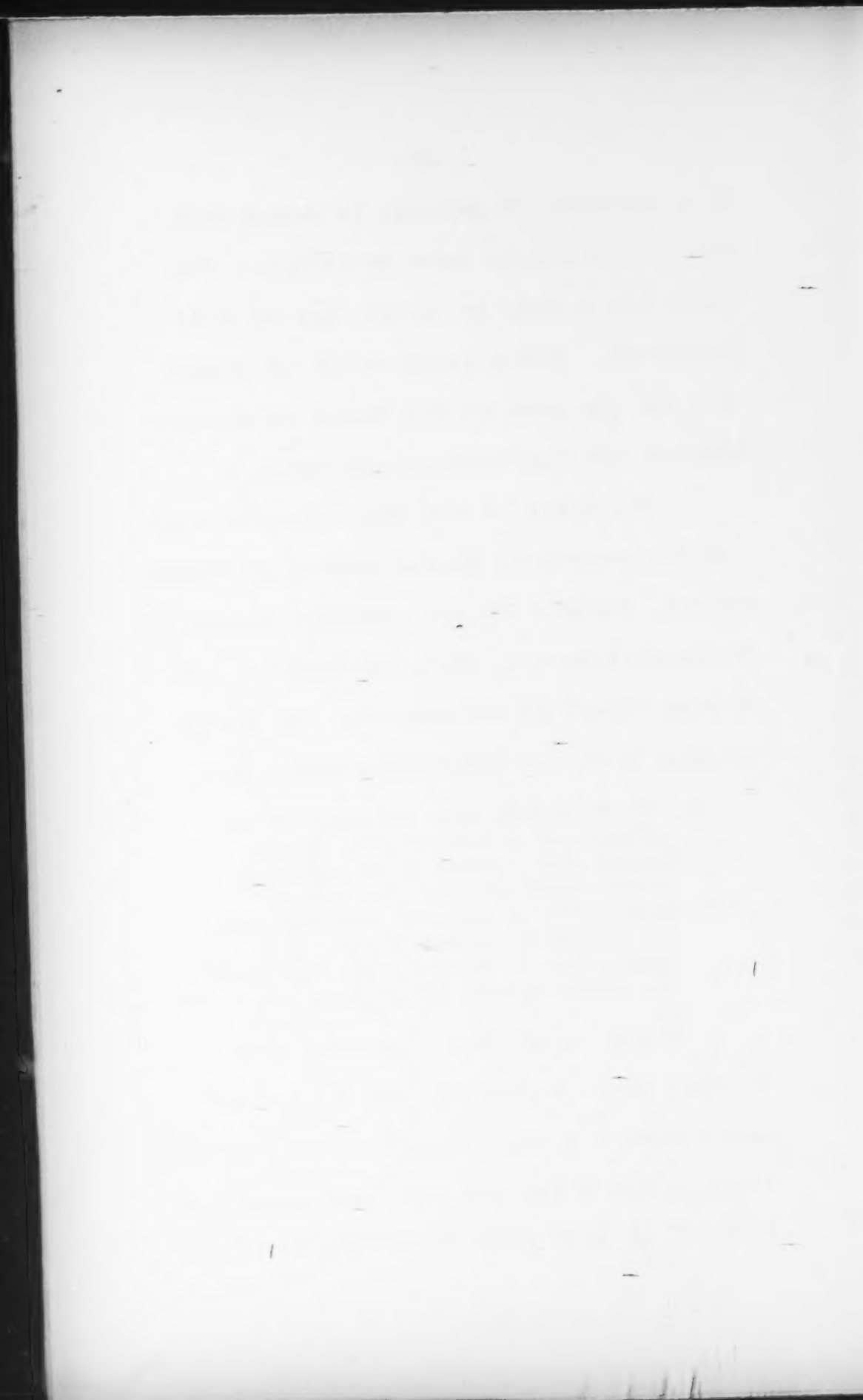


as a non-tenured person, it means that her tenure rights have no effect. The Board has a duty to recall her to such positions. There is no right of selection on the part of the Board as between tenured and non-tenured employees.

The basis of the Magistrate's ruling for sanctions is the adding of Ronnie Ceruti, Russell Protti, Barbara Turner, Margaret Townsend, Mary Lauderdale, and George Hebert as defendants. He states on page 6 of his Memorandum and Order:

"No evidence was introduced to establish a factual or legal basis for filing suit against these individuals nor could plaintiff's counsel articulate, in argument after trial, any basis for liability on the part of these added defendants. . . ."

There is no way to refute this finding by a Magistrate who denounced petitioner and her counsel vehemently all through the trial and publicly committed himself to hold them in violation of



Rule 11 long before any hearing was called, other than to return to the evidence.

Russell Protti was Superintendent of the Jefferson Parish School System when petitioner returned from sabbatical. Barbara Turner was Assistant Superintendent for Personnel. Ronnie Ceruti was specifically in charge of petitioner to administer the sabbatical law to her. That law provides for a contract with the employee going on sabbatical (La. R.S. 17:1187, P-131, p. 11, included in Appendix). R.S. 17:1182 provides:

"Every person on sabbatical shall be returned at the beginning of the semester immediately following such leave to the same position at the same school from which such leave was taken unless otherwise agreed to by him."

Petitioner never agreed to be assigned to a school other than the one she went on sabbatical from, to-wit,

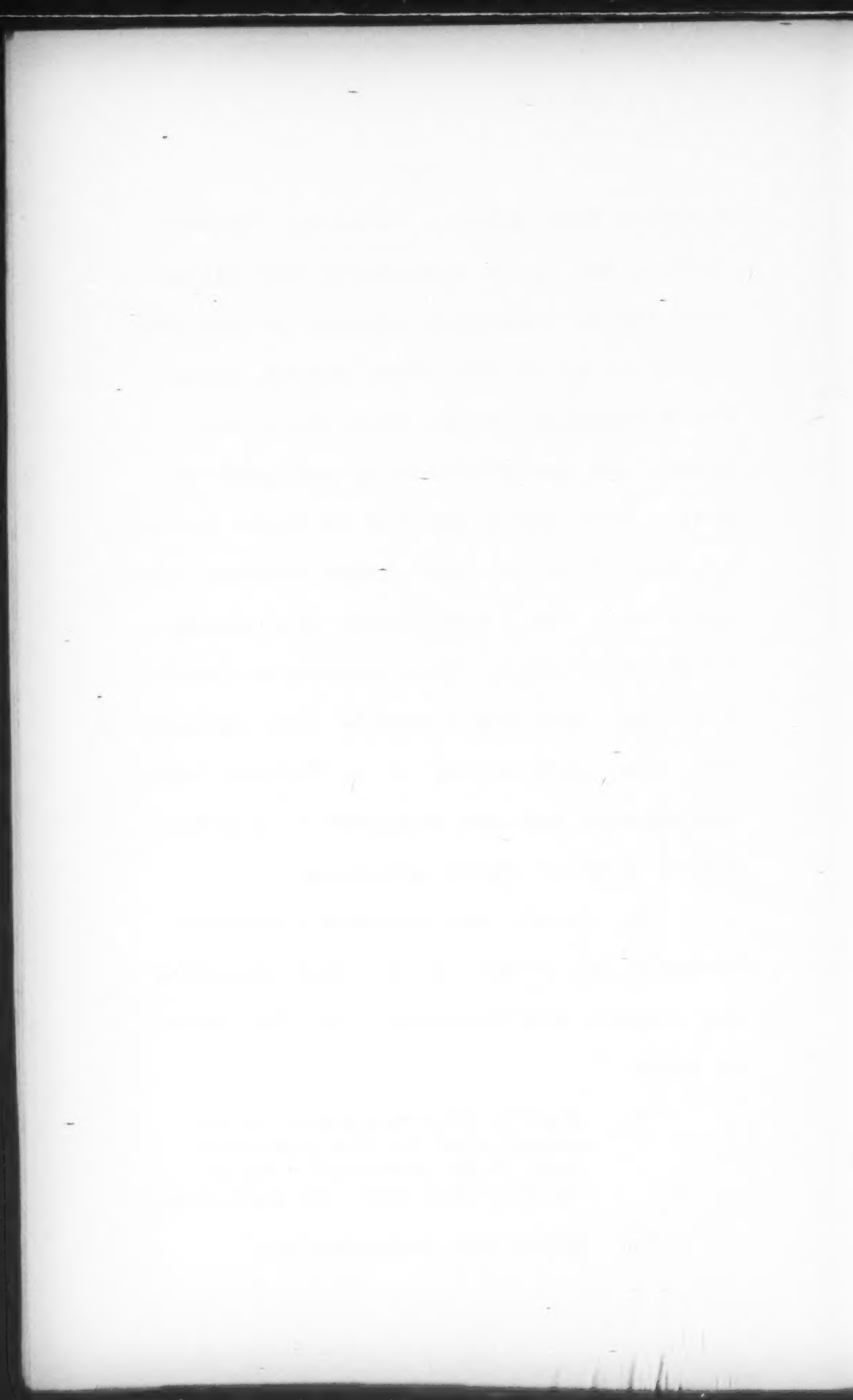


Bonnabel High School. However, without calling her in or discussing the matter with her or inquiring whether or not she agreed to go to the other school across the Mississippi River from where she lived, she was arbitrarily assigned to that school where she had to drive a long distance from her home under adverse traffic conditions. Petitioner introduced evidence of this. Many witnesses testified that upon their return from sabbatical, they were called in to discuss their assignments and not assigned to another school without their agreement.

Mr. Ceruti was Personnel Administrator. Tr. 6-163, L. 5. His testimony was evasive and tortured. At. Tr. 6-167 we find:

"Q. Aren't they supposed to be reassigned to the position that they previously held before they went on sabbatical?

"A. Well, not necessarily,



something may have happened.

"Q. Doesn't the policy provide that, Mr. Ceruti?

"A. The policy -- the policy insures that she is returned to a similar position, to the same position but if she's transferred or anything, then she's returned to that position or anybody.

"Q. Now, Mr. Ceruti, you've been sitting there during the testimony of several of these instances and everyone of them said that they were called in--

"Mr. Grant: I object.

"Mr. Russo -- before they were reassigned, did they not?

"Mr. Grant: That's not proper cross-examination.

"The Court: Let's approach the bench. . . ."

And on page 6-173 at the bottom we find:

"Q. Before she went on sabbatical, she was a disciplinarian at Bonnabel, was she not?

"A. According to the records?

"Q. Yes. . . .

"A. Yes."



"Q. Isn't it the policy of the Jefferson Parish School Board dealing with sabbatical that you have to go right back to the job that you were in when you went on sabbatical, isn't that the policy?

"A. We have exception to that.

"Q. But that is the policy, is it not?

"A. I think it's, yes, part of the law"

And on page 6-175:

"Q. Well, she told you that she was supposed to go back -- that she had been at Bonnabel when she went on sabbatical and that she was supposed to go back there under the policy, didn't she tell you that? . . .

"A. Certainly, she didn't tell me before she was reinstated. I didn't have any contact --

"Q. Well, you didn't call her in before she was reinstated as you were supposed to, did you? That's why she didn't tell you."

See Exhibits P-107, P-111, and P-118, which show that the improper assignment was called to the attention of Mr. Montet, Director of Personnel.



And on page 6-176:

"Did you know that she was supposed to go back to Bonnabel when you issued those papers?

"The witness: No.

"The Court: No.

"Mr. Russo:

"Q. Did you check her personnel record?

"A. The last thing in it was disciplinarian at West Jefferson.

"Q. Well, did you check to see if that was correct, Mr. Ceruti?

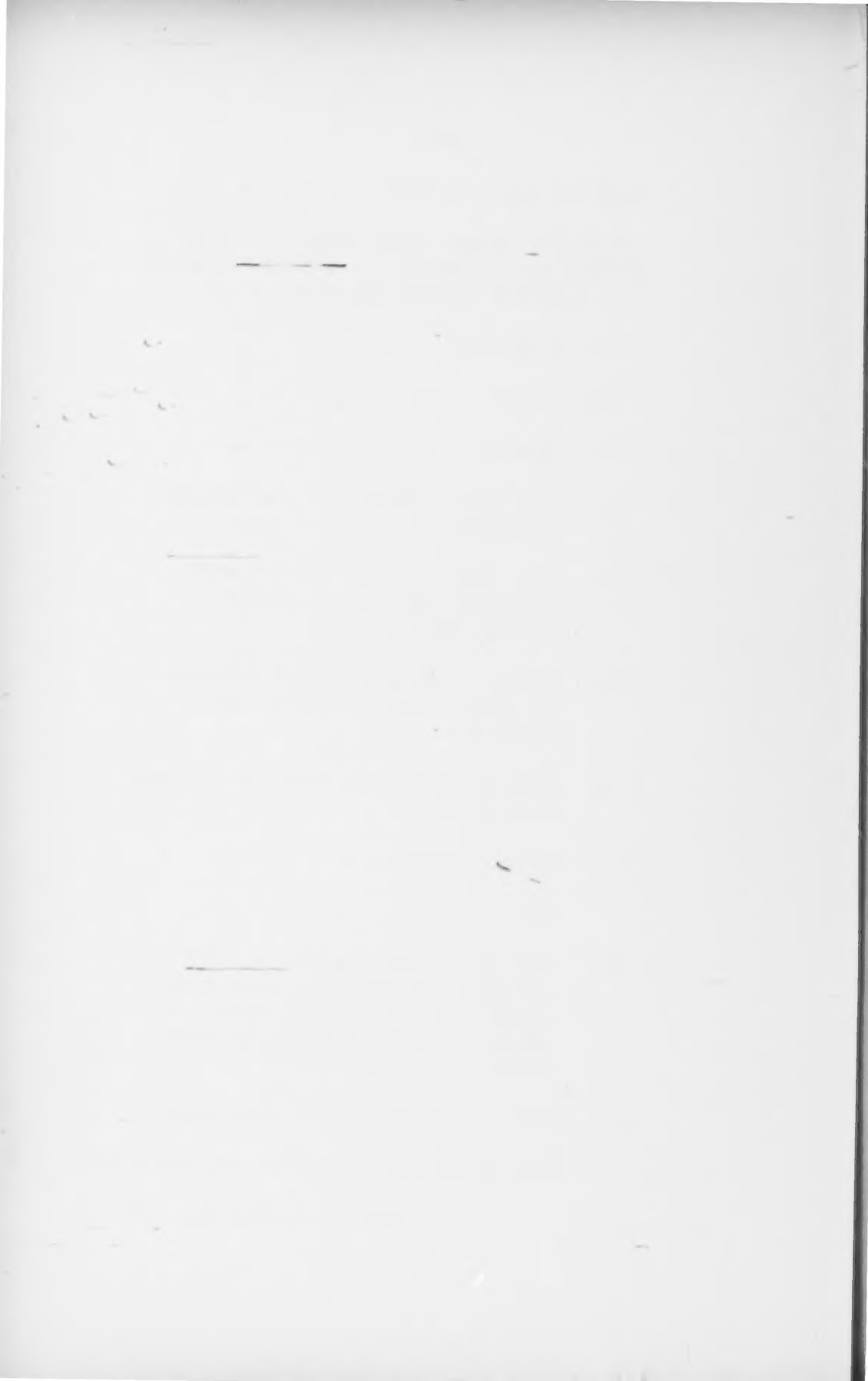
"A. Did I check to see if it was correct?

"Q. Yes, uh-huh.

"A. No.

"Q. And did you check to see how it got in there? How did that get in there when it wasn't supposed to be her last assignment?"

Mr. Grant brought out that the Board had assigned her to West Jefferson on August 20, 1986, notwithstanding its



own policy and state law. Tr. 6-181.

It is submitted that an employee's duty to comply with state law is not removed by his supervisor's issuing an order requiring that he violate state law.

His duty is first to obey the law and to render petitioner her due. No one gave nor could give the Jefferson Parish School Board the authority to ignore state law. Mr. Ceruti's compliance with a directive of the School Board which he knew to be illegal makes him, it is submitted, a co-conspirator of the lawbreaker in denying petitioner's rights. It is submitted that said conduct, besides being a constitutional tort in deprivation of her due process job property rights under the 14th Amendment, is also a violation of 42 US 1983 and 1985(3).

An administrative agency has only the power and authority expressly granted



by the Constitution or by statute.

Realty Mart, Inc. v. Louisiana Board of Tax Appeals, 336 So.2d 52,54 (La. App.1st Circ., 1976). In re Investigation of John L. Lauricella, Jr., 546 So.2d 207,210 (La.App.1st Cir., 1989).

Barbara Turner was Assistant Superintendent for Personnel Relations. Tr. 7-25. She assumed that position on January 15, 1987.

"A. My duties are to supervise the functions of the division of personnel, to make certain that all the policies and procedures are adhered to. . . ."

And at Tr. 7-251:

"A. Disciplinary actions probably would be handled by Mr. Ceruti or by Miss Allen."

The evidence indicates that petitioner came back from sabbatical on January 20, 1987, five days after Ms. Turner assumed office. Tr. 7-251. She and the Superintendent have to sign the personnel

recommendations that go to the School Board. Tr. 7-254. At Tr. 7-257:

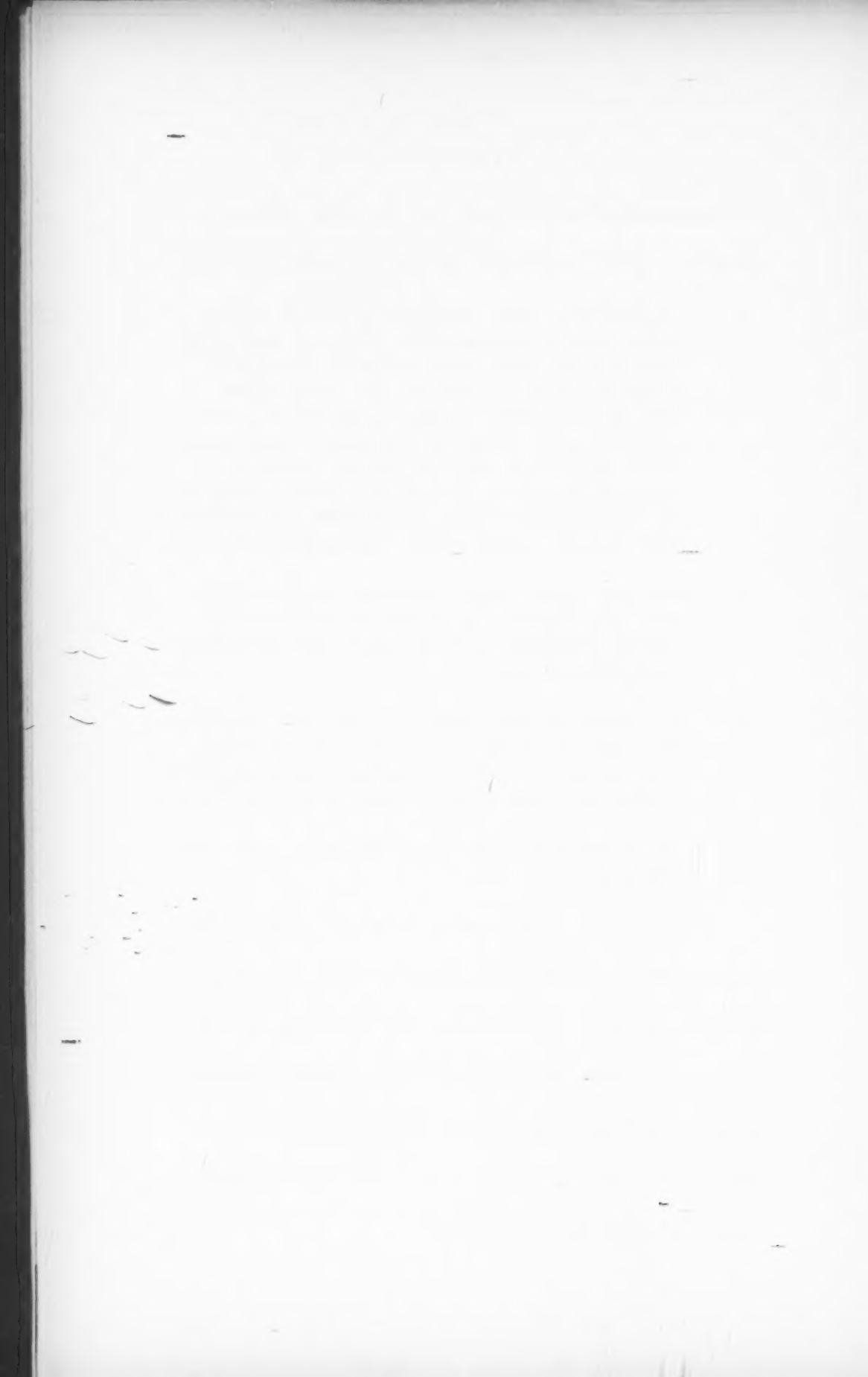
"Q. In truth, the recall period dies with the limitation period set by the Board for the recall period, does it not? Which in the case of the last 1986 reduction in force would have been on August the 6th, 1987 but the employee's tenure rights do not die with that demise of the reduction in force procedure. Now isn't that your understanding?

"A. Again, sir, the tenure rights of any employee is always certainly, those rights are always of primary consideration to us.

"Q. So that after that time, an employee who has not been recalled, still has recall rights under tenure notwithstanding the reduction in force--

"A. If a person is tenured and has not been placed --."

At. Tr. 7-259 she admits that the equation procedures concocted for RIF purposes are no longer in effect after recall. She testifies that the tenure rights of an employee are always in effect. Tr. 259, L 75. At Tr. 7-264, the following is found:



"Q. Ms. Turner, the job that an employee who is tenured and has a right to recall, that person has a right to recall to any job which is nearer in rank, dignity and status to her tenure job no matter how small that additional dignity might be, isn't that right?

"A. That individual has the right to recall to the position that is nearer to his or her tenured position if there's nothing else there that is equal to what they were originally --

"Q. Yes. And she has the rights to do that as many times as the job may occur which is a step or any distance nearer to her job of -- in equal dignity, rank and status, isn't that right?

"A. Would you mean that that person keeps moving?

"Q. Moving up towards her tenured position until she gets to an equal job?

"A. Yes, if a person is working toward the position that he or she was tenured in and is trying to get back to that position yes."

Petitioner was in a salary category 40 position. She was assigned a salary category 7 job. Her tenured salary category 40 position is a 12-month position.

The salary category 7 position of Disciplinarian is a 9-month position. During the summer she is assigned to odd jobs. Numerous jobs have opened nearer to her tenured job, such as Assistant Principal, Consultant, etc. Indeed, a Supervisor of Child Welfare and Attendance opened up on several occasions, but other persons who were already in Principals jobs were assigned to this job to keep her out, or, when she came up for it, the job was abolished. Thus Mr. Turner violated her duty to petitioner to (1) see that she was properly assigned to her sabbaticāl leave job upon her return from sabbatical, which was permanent Disciplinarian at Bonnabel; and (2) see that she was properly recalled to any job opening up from January 15, 1987 to August 6, 1987, and (3) petitioner's right to recall position opening up after August 6, 1987



to the time of trial. However, Richard Carpenter, who was tenured only as a Disciplinarian on June 27, 1984 was assigned a job as Acting Assistant Principal on January 14, 1987, and Assistant Principal on May 20, 1987, ahead of petitioner who had more seniority than he did. The same with William Kelly. Defendants' justification for his assignment was that he was being paid the salary. Mrs. Brainis was also being paid a Category 40 salary and had more seniority than he did. Therefore, she should have been assigned ahead of him. Phyllis Benoit was a classroom teacher, with no administrative seniority, yet she was assigned ahead of petitioner to Acting Assistant Principal on January 14, 1987, and Elementary Principal on May 6, 1987. Evidence of several other such assignments was introduced in the Lower Court.

Russell Protti testified there is a policy requirement that a conference be held with an employee returning from sabbatical, Tr. 7-225. He said they were not required to return them to the same school, despite R.S. 17:1182, which states exactly that in mandatory terms " . . . shall be returned . . . to the same position at the same school. . . ." This statute obviously does not lend itself to "interpretation" as he testified to at Tr. 7-226.

Petitioner was discriminated against in the assignment of entitlements as shown by P-43. Nos. 1, 2, 7, 8, 14, and 15 were in exactly the same position on June 27, 1984, the inception of the 1984 RIF. Yet they were given entitlements to 40A positions because they were in those positions at the RIF inception although non-tenured in the job, but petitioner, #25,

was not given 40A entitlement, but only 40B entitlement. Thus, she was not assigned to a 40A position or recalled to one, although she had as much entitlement to such a position as these men had. This has nothing to do with the requirements of a particular job.

Russell Protti assumed the job of Superintendent in January 1987, Tr. 7-236. The 1986 RIF did not end until August 6, 1987. He made assignments from the 1986 RIF matrix, P-143. On Tr. 7-238, 239, he testified that he assigned Richard Carpenter, William Kelly, and several other employees to Acting Assistant Principal or Assistant Principal between January 1987 and October 7, 1987. All these people had less seniority than petitioner. He testified that seniority and tenure rights were not considered in assigning these people before petitioner. Petitioner was properly certified by the

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state for the jobs of Assistant Principal and Principal, and she should have been assigned to those jobs, Tr. 7-240. She did not have to prove that she was better qualified than those assigned. Yet Protti ignored her tenure rights and assigned others to these jobs. He breached his duty to petitioner by so doing and deprived her of her property rights protected by the due process clause of the 14th Amendment of the Constitution.

Tenure law allows a person to go to any job nearer to her tenured job than the job she was reduced to. If that job is one or two notches higher than the job she is tenured in, then it is nearer to the tenured job than her present assignment. That this is permissible is a necessary implication from the "compensation" part of the RIF regulations, P-40:

"Individuals employed in positions in which salary increases occur as

a result of reorganization shall remain at their pre-organization salary schedule unless they meet the minimum job qualifications as specified in the revised job description. . . ."

Superintendent Protti testified that a tenured employee has a right to recall to a job nearer in rank, dignity, and status to his tenured job. Pg.7-245,246:

"A. If you're tenured in a position and that position is abolished and you have to move down in the organization within the rank of the organization, you normally would find a position that is available for which the person qualifies.

"Q. And that person has the right to move to a position which is -- to move up again as soon as there is a position which is available under tenure?

"A. That's correct.

"Q. And nearer her rank, dignity and status.

"A. That's correct.

"Q. Doesn't she have that right?

"A. Yes, a person has that right.

"Q. Yeah, and she has that right to do that on several occasions if

A series of investigations have
shown that the human mind is
capable of storing information
for a long time, and that it
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These findings have important
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necessary to get back to a job which is equivalent to the job that she had, does she not?

"A. That's correct"

Mary Lauderdale was Assistant Superintendent for Instruction. Petitioner was aware that she had a great deal of influence on who was assigned where in the school system. She explained that if the position was filled through recall, no application was needed. Thus, on page 7-145 she testified that if the assignment was by recall, there was no advertisement of the position, L 9-20. There should have been no advertised positions until all those entitled to recall had been recalled. They deliberately ignored petitioner's right to recall.

George Hebert was in the job of Coordinator of Student Services in 1974, the same position petitioner held. This is a 40A job. Assistant Principal was classified as 40A. He was assigned based

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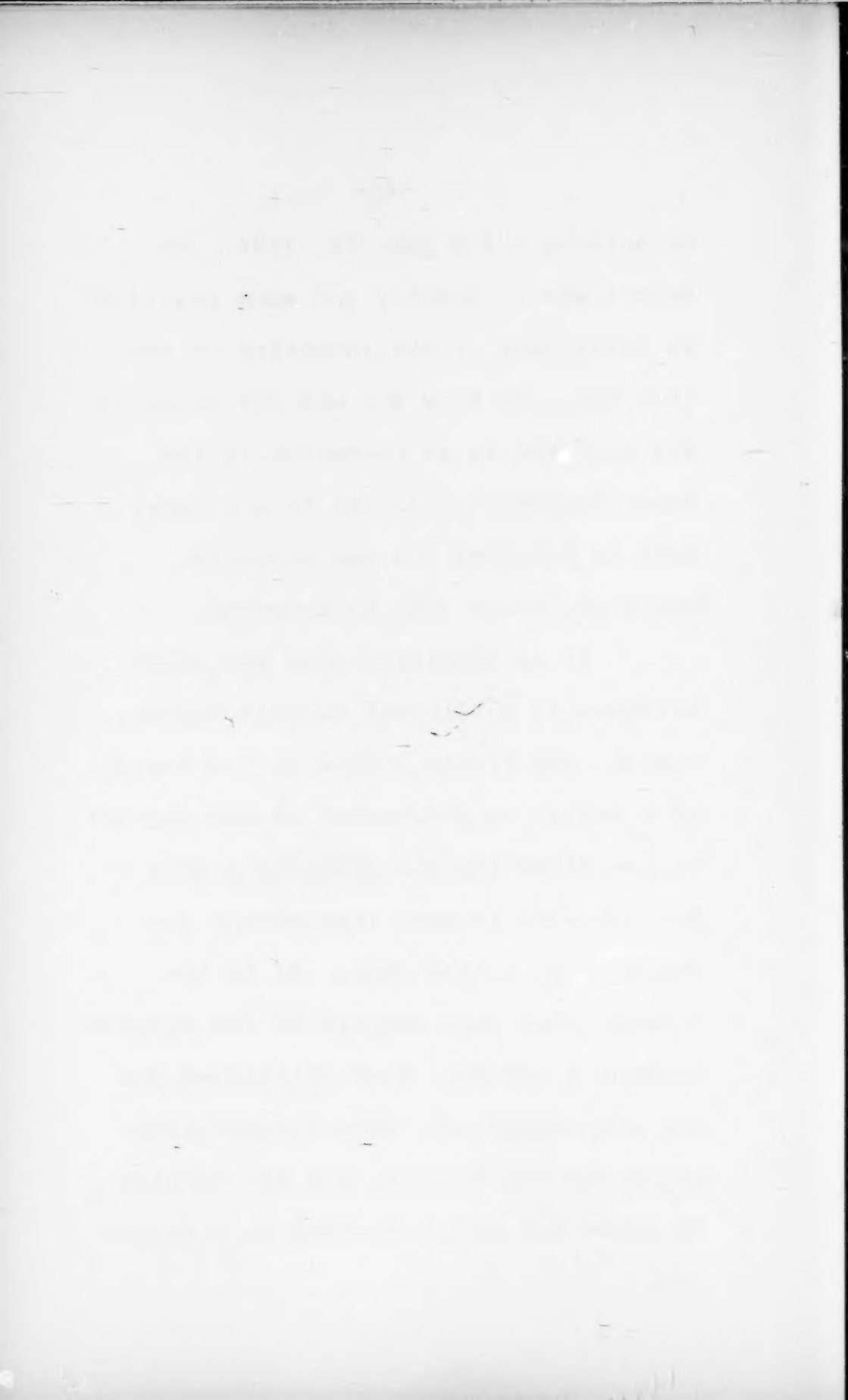
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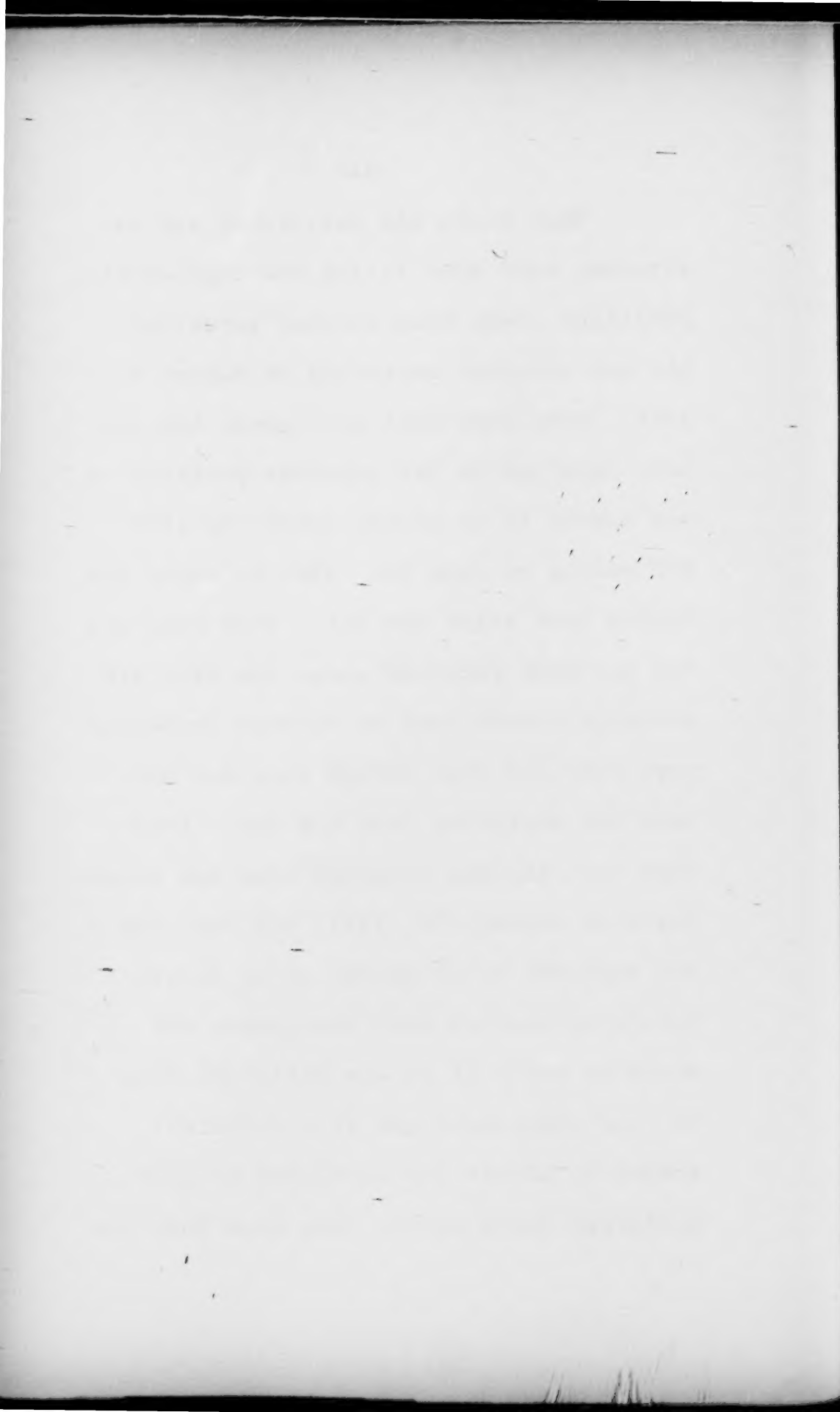
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on holding a 40A job, Tr. 7-94. Mr. Hebert was in exactly the same position as petitioner at the inception of the 1984 RIF. He knew she was not properly assigned and as an executive in the Superintendent's cabinet he was under a duty to see that she was properly assigned, which duty he breached.

It is submitted that the above evidence is sufficient to hold Ceruti, Turner, and Protti liable on the basis of a denial to petitioner of due process of law affecting the property rights in her job. It is more than enough evidence to go to the jury. As to the others, they were members of the Superintendent's cabinet, knew petitioner and her qualifications, knew the job from which she was demoted, and did nothing to cause her to be returned to a proper job.



What facts did petitioner and her attorney have when filing the supplemental petition? They knew another so-called RIF had occurred beginning on August 6, 1986. They knew that petitioner had not been recalled to her previous position or one nearer to it either under the 1984 RIF ending on June 30, 1986, or under the tenure laws after the RIF. They knew she had not been recalled under the 1986 RIF although others such as Richard Carpenter were recalled even though they did not have the seniority that she did. They knew that she had returned from sabbatical leave on January 20, 1987, and that she was supposed to be called in by Ronnie Ceruti to discuss what assignment she would be given if it was different from her old assignment and at a different school to obtain her agreement to such different assignments; they knew that she



was not called in for such a conference; they knew that under school policy and state law there was a mandatory duty to return her to the same school and in the same position from which she left to go on sabbatical, but that Ronnie Ceruti, who was charged with doing the detailed work, Barbara Turner, who was responsible for seeing that he did it and that the regulations were carried out, and Russell Protti, whose duty it was to also enforce state law, failed to do so while knowing, as the above-quoted testimony shows, that they had an obligation to do so. All of this is incontrovertibly established in the record.

Of course, the right to recall of a Louisiana tenured teacher cannot be curtailed by RIF regulations. R.S. 17:445.

Petitioner and her lawyer knew that she had been treated since the writing of the April 27, 1984 bus audit letter as though she had no tenure rights at all. Petitioner

submits that she has been treated differently from other employees. These defendants had a duty to provide her with all the information she needed to make decisions of her entitlements under the law in relation to her fellow employees. They did not do it. She had to dig through all the minutes of the Board during the relevant period to ascertain the information in spite of the confusing misleading information coming from defendants to her.

Judge Schwarzer gives the following examples of Rule 11 violations at 104 FRD 181,188: trademark infringement based on the alleged sale of a single pair of jeans for \$10 without investigation of the facts before filing; failure to determine the date of the occurrence of an accident to determine whether it was time barred; failure to ascertain facts to satisfy long-arm statute jurisdiction (defendant's contact with the state); alleging refusal to

arbitrate when no arbitration had been demanded.

The examples he cites on failure to ascertain the law beginning at p. 190 are: a suit against the State Department for neglecting enforcing a statute making it unlawful for a citizen to leave the country without a passport; vendetta actions--filing suit where the deciding issue has already been decided by another agency and failing to determine jurisdiction. There is nothing like that in this case.

Counsel for petitioner is a one-man law firm. He accepted this case with a firm belief that petitioner's rights had been and continue to be grossly abused by the Jefferson Parish School Board in cooperation with these other defendants. It is submitted that the evidence introduced in this matter shows that petitioner's rights have been grossly abused.

the first of the series of experiments was made

on the 1st of May

the object of the experiment was to

ascertain the effect of the temperature of the

air on the rate of the reaction between

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Petitioner's underlying claims in her supplemental petition are not "frivolous, unreasonable, or groundless, as shown above. Christenburg Garment Co. v. EEOC, 434 U.S. 412,422. And the defendants are violators of federal law. They denied petitioner's appeal rights to the Board when she attempted to appeal their rulings on their charges against her because of her exercise of her free-speech rights; they deprived her of her job property rights by not assigning her properly in the 1984 so-called RIF initially; they failed to properly recall her during the two years of the RIF; they failed to properly recall her under the state tenure laws; they failed to recall her during the 1986 so-called RIF; and they failed to recall her after this to this very day; and they denied her appeal rights to the Board under the 1984 and 1986 RIF. Indeed

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every person affected by these so-called RIFs have been returned to a proper job except petitioner. All of this amounts to a denial of her job property rights under the due process and equal protection clauses of the 14th Amendment to the U.S. Constitution. See Bourgeois v. Orleans Psh. School Bd., 53 So.2d 251(La. 1951). The Magistrate in his ruling on the defendants' motion for directed verdict states prior to the so-called hearing:

"And then, I'm going to take the latter period, 1986, to the present, July 1st, 1986 present, since there were no recall rights and find out who falls within that category."

That, as shown above, is an erroneous statement of Louisiana law. Petitioner's counsel, who had no idea what he was going to be asked prior to this so-called hearing, which was supposed to be a hearing on defendants' motion for directed verdict but instead was used by the Magistrate as a Rule 11 hearing without ever having

specified the charge, and prior to bringing the rule, responded that Robert Farrington had an appointment under RIF to a principal's position which is higher than SCWA. Tr. 8-5. Therefore, under D-4 of the Regs, P-40, he waived his appointment to SCWA. The Magistrate ignored this. He ruled in effect no matter how many times he had been recalled, and no matter if his recalled position was higher than SCWA, he could be placed in SCWA ahead of petitioner because he had more seniority than she did. D-4 of the RIF regulations and the state jurisprudence was ignored by him.

It was not possible for petitioner to get a fair hearing where the Magistrate constantly misconstrued state law (Tr. 8-12) without citing any authority therefor. Petitioner had then, has now, and until the Legislature changes the law as

interpreted by the state courts, will have in the future a right to recall under the tenure laws without applying.

The Magistrate dismissed disparate treatment of petitioner as a government employee summarily, with the explanation:

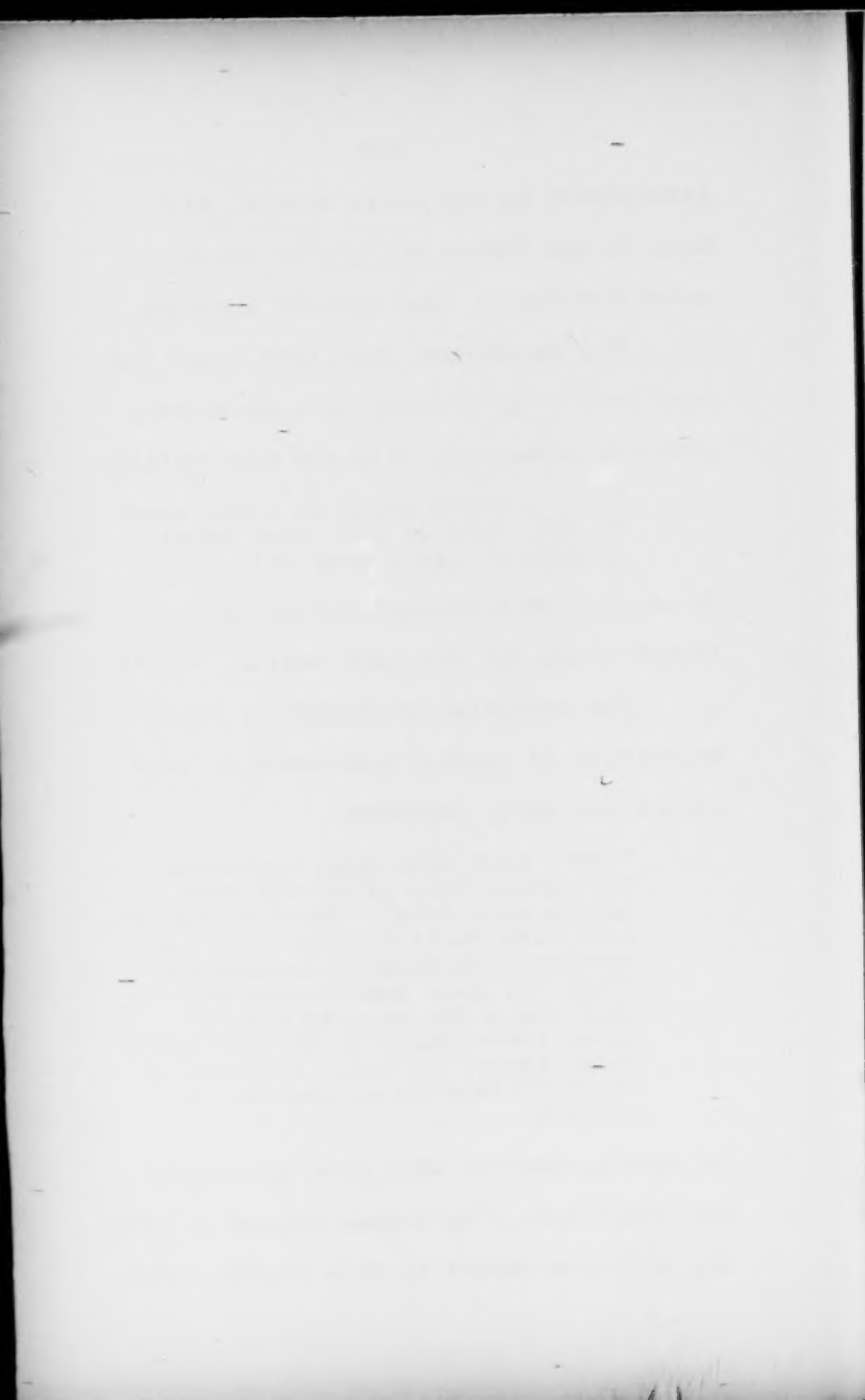
" . . . there being no claim based on sex, race or age, your equal protection claim must fail. . . ."

Tr. 8-23. He dismissed her property rights claim for the same reason. Tr.8-23.

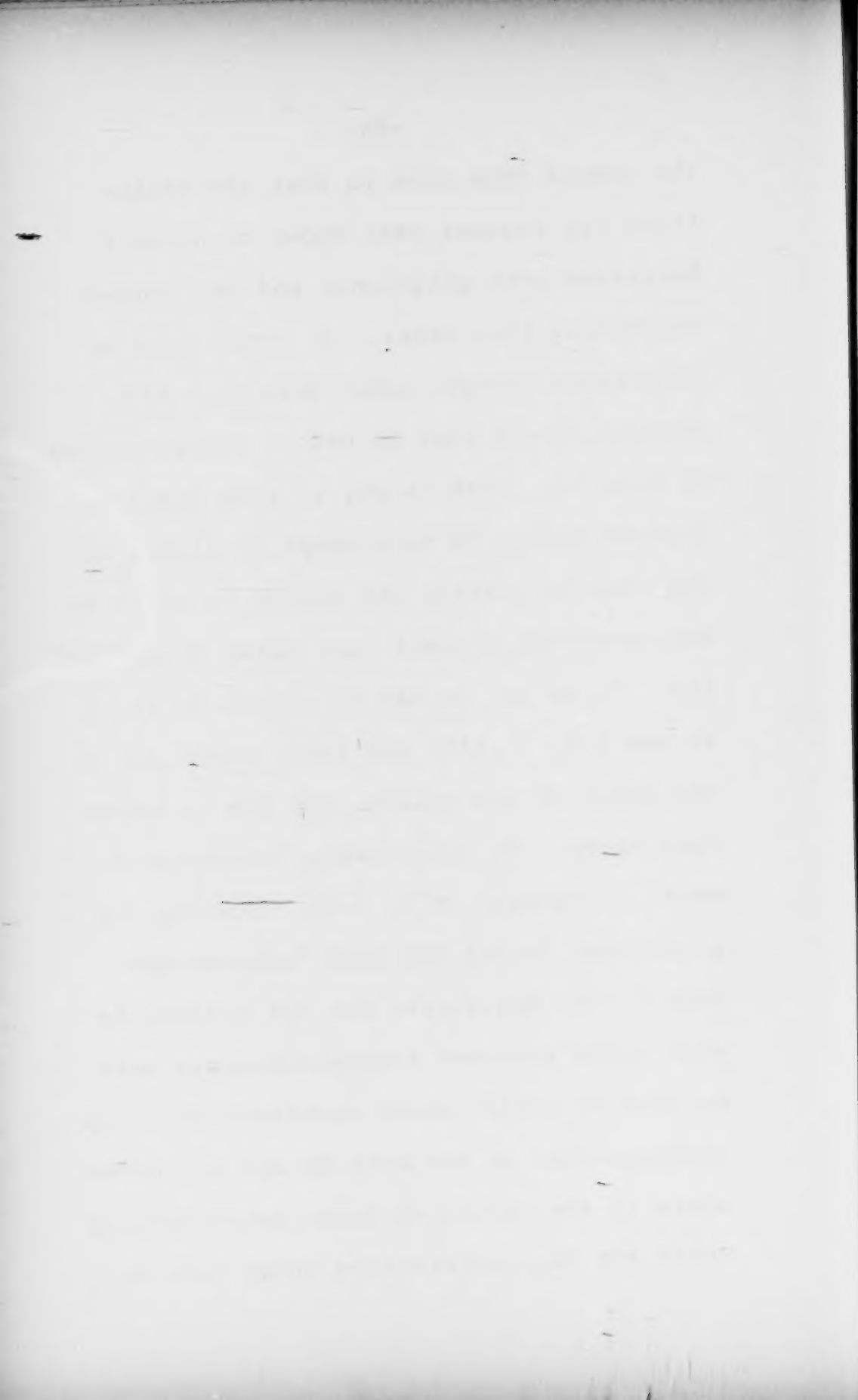
The following statement by this Magistrate is without substance in this record and never happened:

"There have been many instances throughout this trial and even before this trial, where in connection with certain issues, in connection with certain defendants, there has been some acknowledgment that there was no case against these individuals or on that particular theory of law. In light of those statements on record, it would be . . .

No such statements were made by counsel for petitioner. He defies anyone to find any such statements in this record. What



the record does show is that the Magistrate for reasons best known to himself harrassed both petitioner and her counsel throughout this trial. At every turn he threatened counsel under Rule 11. His threats showed that he had no understanding of Rule 11. That is why it took him from 3/16/88 to 7/1/88 to attempt to figure out some way to justify his ruling to which he had committed himself long prior to the hearing. To do so, he had to ignore P-131, p. 11 and R.S. 17:1187 and 1182, which are in the teeth of his ruling, and are in mandatory terms. He again makes "acknowledgement" statements on p. 8-55. Counsel for petitioner denies any such "acknowledgement." The Magistrate did not articulate what these supposed acknowledgements were. He says he could impose sanctions based on conversations he had with me and Mr. Grant. Where is the record of those conversations which are so incriminating under Rule 11?



Tr. 8-56. What has Rule 11 to do with attempts to compromise that the Magistrate may have made? Does not petitioner have a right to a jury trial? He mentions petitioner's "condition." Tr. 8-56. What "condition" is he talking about and where is there any evidence in this record about her "condition"? Tr. 8-56, L 20.

Counsel for petitioner wanted a full evidentiary hearing on this matter. Due process requires as much. In such a hearing, the burden of proof is, it is submitted, on the Mover. Upon what evidence is the Magistrate's ruling based? Where is it articulated?

Petitioner introduced a great deal of evidence as to the defendants added in the supplemental complaint. See above. Additionally, these individuals were sued in their official capacities. As this Court has held, such a suit is, in reality, against the agency by which they are

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employed. The sanctions imposed herein apparently were imposed because petitioner and her counsel allegedly had a duty to see that the action did not continue.

Thomas v. Capital Security Serv., Inc., 836 F.2d 866 (5th Cir.1988), 874. Note 9, cited by the Magistrate for this proposition holds no such thing. Indeed this case (en banc) repudiates that holding which its panel had made. The only duties imposed under Rule 11 are pre-filing duties.

Accordingly, his findings on pp. 7,8 of his memorandum are without foundation and are erroneous as to law and the obligation of Rule 11. A supplemental memorandum, it is submitted, is not a "paper" under Rule 11. It is argumentation as to applicable law and facts; not a pleading or affidavit in evidence. Counsel for petitioner has no understanding to this very day of how this memorandum is supposed to have violated Rule 11.

The Magistrate states on p. 8 of his order:

" . . . Counsel has demonstrated on numerous occasions during the course of this litigation, an inability to accept, in a manner expected of counsel, the rulings of both this Court and the decision of the state courts. He has attributed biased and non-existent motives to rulings of this Court."

Petitioner filed two motions for the Magistrate to recuse himself because of the bias he showed in this case from the first hearing on a motion brought by the defendants. There he made statements to the effect "These teachers are never satisfied" indicating a closed mind to the problems of teachers such as petitioner. Counsel for petitioner agreed to the trying of this case by the Magistrate in the hope of cooperating with the Court to remove some of the burden from the judges. However, when he agreed to this, counsel had no idea that the mind of the Magistrate was closed to the concerns of teacher petitioners. This Magistrate abused counsel for

The following is a list of the names of the persons who have been elected to the office of Justice of the Peace for the year 1900. The names are given in alphabetical order of their surnames. The names of the persons who have been elected to the office of Justice of the Peace for the year 1900 are as follows: [The following text is extremely faint and largely illegible. It appears to be a list of names, possibly of the form 'Name, Name', where the first name is the surname and the second is the first name. The names are arranged in alphabetical order of the surnames. Due to the poor quality of the scan, the specific names cannot be transcribed accurately.]

petitioner like he has never been abused by any Court before. Indeed, prior to this happening, counsel had never been abused by any court before, including the U. S. District Court for the Eastern Dist. of La., in some 27 years of practicing law. There is no question that counsel considered the ruling that a Louisiana teacher with tenure rights must apply for a job, notwithstanding that she has a right of recall under the law, as being erroneous. RIF rules cannot deviate from the tenure law. R.S. 17:445. There is no question that counsel for petitioner disagreed with his ruling that petitioner had no right to return to the same job from the same school from which she went on sabbatical. R.S. 17:1182. There is no doubt that counsel disagreed with his res judicata ruling in relation to what "causes of action," as that phrase is defined by La. jurisprudence, were excluded. Under La.

law only the grounds (1) pleaded and (2) litigated are precluded by res judicata. See Sewell v. Argonaut SW Ins.Co., 362 So.2d 758 (La. 1978). There is no doubt that counsel disagreed with the Court's mechanical ruling as to prescription of her 1st Amendment action. The Magistrate has never explained how this could be in view of the fact that petitioner filed a timely appeal and the Superintendent deceived her by telling her the appeal had been lodged when it had not. Indeed the Magistrate did not explain why it was that petitioner's appeal in this case is different from the position of Logan in Logan v. Zimmerman Brush Co., supra. Counsel does not understand how the proceeding in state court could be said to be brought under the Louisiana tenure law, when it is not possible under the provisions of that law (R.S. 17:443) to initiate a hearing except before the

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Board, where the burden of proof is on the Board to justify its action, and petitioner then has a right of appeal to the state court on the record established before the Board. Indeed, it is submitted that this is the reason the State Supreme Court rejected writs in that case. See Ford v. Caldwell Psh. School Bd., et al., 541 So. 2d 955 (La.App.2nd Cir., 1989); Loop, Inc. v. Coll. of Rev., 512 So.2d 392 (La. 1987).

Counsel for petitioner was at all times respectful to the Lower Court, notwithstanding that the Magistrate engaged in gross abuse of him and petitioner.

The Magistrate, after finding that the violation consisted only in the filing of the amended complaint and the supplemental memorandum, nevertheless awards attorney fees incurred after argument on defendants' Motion for Summary Judgment and dismissal on December 2, 1987, plus a prorata share of fees incurred on behalf

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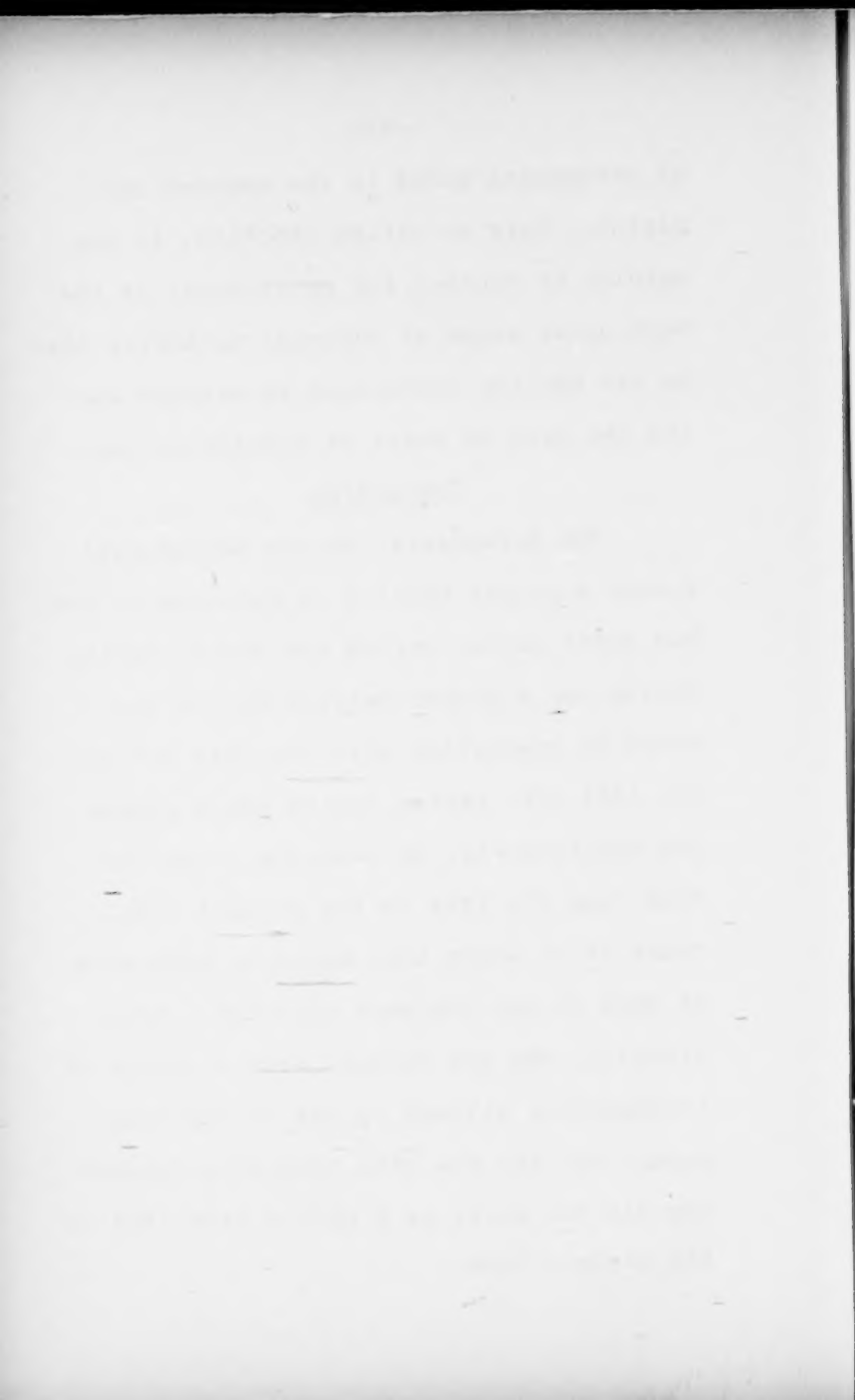
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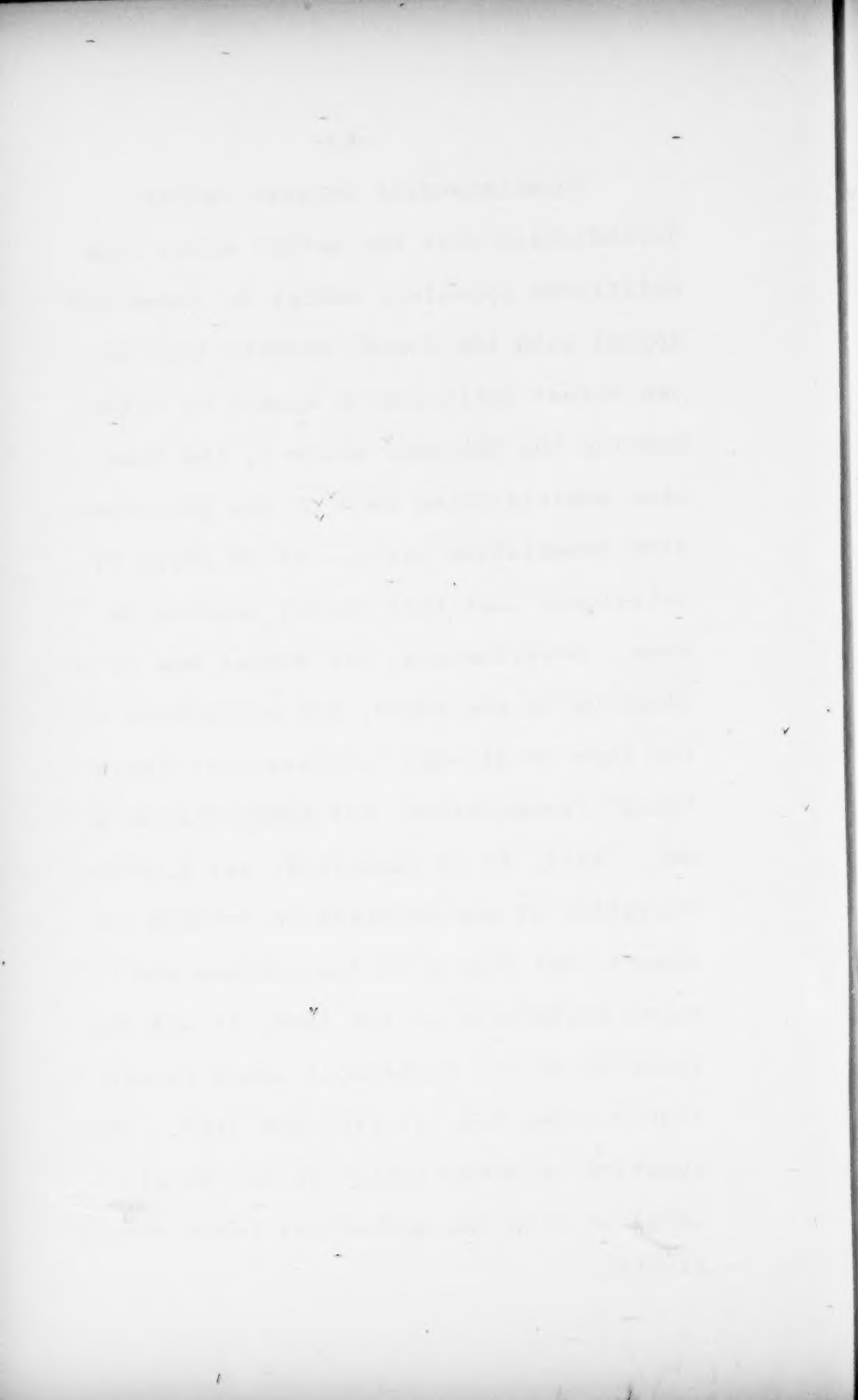
of defendants added in the amended complaint. This so-called sanction, in the opinion of counsel for petitioner, is the most gross abuse of judicial authority that he has had the misfortune to witness during the past 28 years of practicing law.

CONCLUSION

The defendants, having denied petitioner a proper hearing in relation to the bus audit letter before the Board, having denied her a proper hearing before the Board in connection with the 1984 RIF and the 1986 RIF, having denied her a proper job continuously, on numerous occasions from June 27, 1984 to the present time, there is no doubt that property interests of hers in her job were affected. Additionally, she was defamed with a charge of incompetence allowed to get in the newspaper, and she has been treated as though she did not exist as a person from 1984 to the present time.



Superintendent DeRuzzo, whose jurisdiction over the matter ended once petitioner appealed, except to lodge the appeal with the Board, asserts that he can defeat petitioner's appeal by withdrawing the charges, while at the same time administering part of the punishment (the remediation part). It is urged by petitioner that this cannot legally be done. Nevertheless, her appeal was never taken up by the Board, and punishment in the form of alleged "professional assistance" (remediation) was administered to her. This, it is submitted, was a gross violation of her interest in freedom of speech, her rights to due process and equal protection of the laws, as was the ignoring of her sabbatical leave return rights under R.S. 17:1182 and 1187. The question of prescription is not at all involved with the sabbatical leave return rights.



The dignity of work and of professional status are what defendants have deprived petitioner of in addition to her interest in freedom of speech.

She has been abused and persecuted for years because one School Board member, Mr. Theriot, was displeased with the contents of the letter she sent to the Board.

Control over the appeal process is crucial to its validity. Where the person appealing has done all in her power to appeal, the appeal is valid and has all legal consequence. Logan, supra; Houston v. Lock, Warden, No. 87-5428 U.S. ____, 6/24/88. The Lower Courts ignored this jurisprudence.

Rule 11 and its attempted application here is unconstitutional in that:

(1) the burden is on the accuser to specify the conduct which constitutes the violation and give the accused thereof

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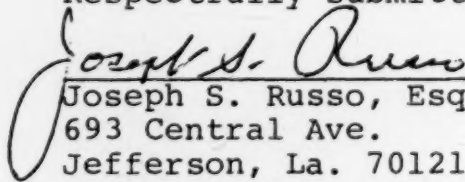
sufficient time so that the hearing may be prepared for;

(2) the burden of proof is on the accuser to prove the violation of the rule;

(3) the Magistrate failed to do either of the above, thus denying petitioner due process and equal protection of the law;

(4) the Rule constitutes an unconstitutional delegation of legislative authority by the Congress to the judiciary.

Respectfully submitted,



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in Proper Person